PALACE MYSORE CENTRE
286

SUPPLEMENT TO

The Mysore Gazette.

PUBLISHED BY AUTHORITY.

BANGALORE, THURSDAY, APRIL 9, 1908.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber at the Public Offices, Bangalore, from Monday the 23rd to Thursday the 26th March 1908.

MONDAY, 23RD MARCH 1908. THE COUNCIL MET AT 3 P. M.

PRESENT.

V. P. MADHAVA RAO, ESQ., C.I.E., Dewan (Presiding).

Ex-officio Members.

T. ANANDA RAO, ESQ., B.A., (First Councillor).
K. P. PUTTANNA CHETTY, ESQ., (Second Councillor).

Additional Members.

Official.

RAJAKARYA PRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
H. J. BHABHA, ESQ., M.A.
RAO BAHADUR M. MUTHANNA, ESQ.
S. NARAYANA RAO, ESQ.
M. KANTHARAJ URS, ESQ., B.A.

Non-official.

RAJAMANTRA PRAVINA C. SRINIVASIENGAR, ESQ.
V. N. NARASIMMIYENGAR, ESQ.
M. C. RANGIENGAR, ESQ., B.A.
B. NAGAPPA, ESQ., (Bar-at-law).
SYED AMIR HASSAN, ESQ.

K. MYLAR RAO, ESQ., B.A., B.L. (Secretary).

CLAUSES 11 AND 15.

PRESIDENT.—The first clause we have to deal with this afternoon is clause 11. Mr. Srinivasiengar has given notice of an amendment in regard to sub-clause (1) of this clause. He will please move it.

MR. C. SRINIVASIENGAR.—Sir, clause 11 deals with suits for village offices and for the recovery of emoluments connected therewith. It is followed by two provisos, the first being that no suit shall be entertained for a mere declaratory decree, and the next one being, as I understand it, that when the emoluments are in the shape of land, suits concerning such land are triable by the Civil Court and not by the revenue authorities. This being a distinct departure from long established practice evoked considerable discussion at the last meeting of this Council. The circumstances of the case are somewhat peculiar. Service lands, at any rate those belonging to the offices of patel and shanbhog, have been assessed fully, and in some cases more than fully, if I am not mistaken, and yet such lands have not been enfranchised, and they retain their original character with the disabilities consequent thereon, such as inalienability, indivisibility, etc. The question is thus one of no ordinary difficulty and was discussed from various standpoints on the last occasion; but a final decision of it was postponed in view to a further consideration of the point. I have since given the matter my best attention, and in the result I have framed an amendment which I have, with the permission of the President, now the honor of moving at this meeting.

My proposal is that proviso (ii) be deleted and that the following be inserted in its place :-

"Where the emoluments of an office consist wholly or in part of land, and where such land has, from whatsoever cause, passed into the hands of some person other than the holder of the office, the claimant, whether holder of the office or not and under whatsoever title claiming, shall, without prejudice to the operation of the rules made under Section 23 of this Regulation, be entitled to recover the land where there has been a wrongful dispossession or wrongful withholding of possession within 12 years next-preceding the institution of the suit. In no other case shall a suit for the recovery of such land be entitled to succeed."

Service land, as the name denotes, is land attached to the office, and as such, strictly speaking, ought to be enjoyed by the person in possession of the office. But under circumstances too well-known to need special mention here, there have been cases in which offices have in olden times changed hands and so also the lands connected therewith. Alienations by sale, mortgage, gift, etc., have to some extent been made, and divisions perhaps to a larger extent. This state of affairs received a check on the introduction of the Potgi Rules and the Revenue Rules both of which, I believe, expressly declare that such lands are neither transferable nor divisible. The divorce that previously existed between the office and the land appertaining thereto thus practically ceased to exist on the introduction of these rules. At any rate, if there have been any cases of violation of these rules, they could not be many. We have thus to deal with lands transferred before the introduction of these rules which may be a fairly large number, lands similarly dealt with since the coming into force of these rules which are not likely to be many, and prospective transfers which may be expected to be practically *nil*, since alienation has been expressly prohibited by Section 5 of the Regulation which we are now engaged in considering.

My remarks though chiefly directed to pateli and shanbhogi inams, may be taken to have a wider application and to extend also to lands attached to inferior service such as those of toti, talari and nirganti. Perhaps, under the latter category there have been a larger number of transfers than under the former. The Select Committee have wisely provided for the framing of rules to give effect to the prohibition contained in Section 5. So far, so good. The rules contemplated may be expected to be conceived in a liberal spirit and to be sufficiently elastic not only to check flagrant abuses, but also to meet cases of real hardship. Every alienation, every division, I do not apprehend, will be necessarily set aside as the inevitable result of those rules; and I am sure that due allowance will be made for the circumstances of each case.

If alienations and divisions are not legally permissible, no plaintiff can found his claim on the strength thereof; likewise, no defendant can set up either alienation or division as a defence to a claim against him. These are matters which have to be decided not by litigation but by decision of Government under the rules I have already alluded to. There remains a small class of cases for which provision, in my opinion, has now to be made in the body of the Regulation. These are cases of wrongful dispossession of property and cases of wrongful withholding of possession from a party who is entitled to possession. These, if made the foundation of a suit, ought, I think, to be adjudicated upon judicially. The question whether such adjudication is to be by Civil or Revenue Courts has to be considered. Here I must be excused for anticipating, because I find an amendment is going to be proposed, I presume on behalf of Government, by Mr. T. Ananda Rao, which limits suits to the hakdar's family. I beg to point out that there will be a much larger number of persons interested in such litigation; for instance, a suit may be by an officiator against a hakdar or stranger, by a hakdar against another hakdar or against an officiator, by a stranger against an officiator, or by one or more hakdars, against a stranger. That is to say, the law declares that service lands cannot be alienated or divided, and therefore taking advantage of this, any person of any one of these classes may deprive any person peaceably in possession of the lands and take shelter under the provision regarding inalienability or non-partition. Suppose a stranger or a relation of the original holder is now in possession and has been so for the past twenty years. Any man whether hakdar, stranger or officiator, may by his influence take away the land from him by force, and if the Court, whether Civil or Revenue, were to confine itself to a decision of the claims only among hakdars, the man deprived of possession so long held by him will be absolutely without a remedy. If he goes to the Civil Court, his claim in respect of service lands cannot be maintained there in the absence of a legal provision authorising its entertainment. In this Regulation, it is proposed to throw the doors of the Court open only to hakdars. How then, can persons who do not come under this class obtain possession of the land or any redress? These are cases which have to be provided for now, and in fact, if I am not mistaken, although all the cases which I have hypothetically put may not arise, some cases have arisen and others may arise, and I see no reason why we should not deal comprehensively with the question and say whatever may be the title and whoever the person may be, if he is in possession and if such possession is wrongfully disturbed, or if a man is entitled to possession and is refused possession, he can obtain relief by resort to the Revenue Court under this Regulation; so, the Government amendment, which is circumscribed in its operation, has to be enlarged; not only should it be enlarged, but in accordance with long existing practice, which I see no sufficient reason for now disturbing, such suits must be made cognisable by Revenue Courts. The idea of vesting Civil Courts with this jurisdiction is in the first place opposed to the spirit of the Land Revenue Code. Of course, the words "against Government" which have been used in Section 221(*a*) of that Code have in the past given a great deal of trouble to those who have had to deal with that section. I do not think that either the insertion or the omission of those words was designedly made. At any rate, Government have always held that all claims of the kind mentioned in Section 221 are cognisable exclusively by revenue authorities and that such cases cannot be taken cognisance of by a Civil Court. I speak subject to correction (and my lawyer friends will here tell me if I am wrong), then I say that our Civil Courts too have held that such cases are not cognisable by them.

Then again, as I said, if there has been a direct violation of the rule, and on the strength of any alienation or partition any man comes to a Court, Revenue or Civil, and asks for a decree, he must be non-suited of course; when possession actually held is threatened for the first time, he ought to be given relief. In such cases, my opinion is that Civil Courts ought not for the first time now to be given this jurisdiction. There is no call for it; there has been no complaint in the past, and what apparently is for the benefit of the parties concerned is not really so on account of the inconvenience, delay and cost attending such litigation. I do not mean any disparagement to Civil Courts. But as a matter of fact, such cases can be more expeditiously and at less cost disposed of by revenue authorities than by Civil Courts. I have exercised my mind over every possible case in which relief may reasonably be required in respect of official land, and it seems to me, barring

invalid alienation, these are the only cases which require relief; and even here, Government will naturally deal leniently and liberally with people who have long held possession and whose possession has been judicially upheld. Under the circumstances, the two amendments, the one I have now put before the Council, and the other to follow, clash with each other and, as I said, the latter amendment is not likely to comprise all cases which may have to be dealt with. Then again, there is the question of limitation. Under the ordinary law of limitation, when there is land involved and when possession of it is sought to be recovered, the time allowed is 12 years. I do not see why the same time should not apply to cases of land under this Regulation and why there should be any curtailment at all. In the amendment that is to come, I do not see any mention made of the time, but I believe that the period meant is three years. But considering that it is land that forms the subject of litigation, it is much too short in my opinion. Then again, if it is conceded, as I believe it will be, that all alienations and partitions opposed to the terms of the Regulation cannot be dealt with in the Regulation itself, but must form the subject matter of rules, is the Civil Court decree to be made contingent upon rules to be framed? Of course, I may be told, my argument will apply also to revenue authorities; but I submit that the cases are not precisely similar. In my amendment which allows the entertainment of a suit, there is a distinct provision that "subject to the operation of the rules," that is to say, subject to Government exercising the right to assess, resume or deal in such other manner as they think fit, the aggrieved party may come to the Revenue Court, file a suit and obtain a decree. There is a reservation proposed to be made of a kind inappropriate to a suit in a Civil Court. Again, it does not appear whether Civil and Revenue Courts are to have concurrent jurisdiction under Mr. Ananda Rao's amendment. As I read it, it means that a party who has a grievance may go to the Civil Court. That means, if he chooses he can ask the revenue authorities for relief or he can go to a Civil Court, the option resting with him and not with the revenue authorities, because the jurisdiction of Revenue Courts in such matters is not expressly taken away. On the contrary, there is a general provision that suits regarding offices can be dealt with in Revenue Courts. Later on comes another provision debarring Civil Courts from entertaining suits except those connected with land. If it is intended that both Courts are to exercise jurisdiction, more mischief than good will come out of it. Under all these circumstances, and chiefly on the ground that practice has always been opposed to Civil Courts entertaining such cases,—parties not wishing for a change and not complaining of the existing state of things, and Revenue Courts being in a position to deal with such cases more promptly and at less cost,—I appeal to Government to kindly reconsider their position and not press their amendment in opposition to mine.

Mr. Syed Amir Hassan.—I beg to second the amendment.

Mr. T. Ananda Rao.—Sir, with your permission I propose submitting to the Council a few introductory remarks before I proceed to deal with the amendments which stand in my name. I find that there are misconceptions regarding the principle of the bill even in quarters where they may be least expected. The subject is a complicated one, and I have no doubt that predilections and opinions of individual officers of Government, and even orders sometimes issued in the name of Government, have contributed to the confusion that prevails in the minds of even officials, both as regards the nature of the Potgi or remuneration fixed for the patel and shanbhog, and as to the character of the service inam lands attached to these two offices, and the limitations under which the right with regard to them is to be exercised.

Some patient research into the past history of the question and dispassionate consideration of the different opinions expressed by different authorities are necessary before a clear idea can be formed of the real nature of the points involved. The issues will be only obscured and the subject further complicated, if we import into the controversy considerations purely of a sentimental character. The attempt made in some newspapers to show that some among us are in favor of maintaining the hereditary principle and that some others are altogether against it, will not advance the correct solution of the questions that arise in the course of the progress of this bill through the Council. In fact there has been no such antagonism as is proposed to be set up. Now as ever before, since the days of the British Commission,

the endeavour has been to maintain and preserve the hereditary character of these offices and the lands attached to them. A few years after the Rendition, the Government of His Highness the Maharaja even went to the extent of attempting to do away with remuneration in cash for the offices of patel and shanbhog, and substituting assignment of land in its place. This was found to be impracticable and was abandoned. Later on, proposals were made for enfranchising the lands attached to the service of patel and shanbhog, and thereby removing apparent anomalies and uncertainties as regards the nature of the tenure of these lands. But these proposals also were abandoned as they were found to be detrimental to maintaining the hereditary character of the service lands. In the amendments which I am about to propose, the Council will find that every endeavour has been made to emphasize the hereditary character of the service inam lands attached to the office of patel and shanbhog, and to retain the lands in the possession of the hereditary families. Far from subverting the hereditary principle, the amendments are calculated to emphasize and reaffirm it. This is especially so in regard to proviso ii to sub-clause (1) of clause 11 as it stood in the original bill, and also clause 15 which would, if retained, work to the detriment of the hereditary principle. I hope when you have duly considered the amendments you will find that the alleged antagonism in respect of the maintenance of the hereditary character of these village offices has no foundation in fact.

With these preliminary remarks, I shall proceed to deal with the several clauses seriatim.

My proposals with regard to clause 11 are two-fold. In the first place, I wish to ask the Council to amend the clause as it stands. This is amendment No. 1 in the list which stands in my name. In the second place, I wish to propose to the Council to insert a new clause which I call 11 A for the present. This comes later on in the list. I will now dwell only on the former. Of that amendment the omission of the proviso No. ii is the main part. The rest is only consequential.

This proviso No. ii is a reproduction of the corresponding provision in Section 13 of the Madras Hereditary Village Offices Act iii of 1895 and is unsuited to Mysore. In Madras, all Village Service lands (*Maniam* or Inam lands as they are called in the vernacular) have been enfranchised. In Mysore, they have not been enfranchised, and the general sentiment is against such enfranchisement. And I may add that attempts made in that behalf once or twice in the past were ultimately abandoned.

Under the system of regulating the remuneration of village servants in Mysore, a question of the kind referred to in the proviso (ii) under notice cannot arise. In the case of the minor village servants—toti, talari and nirganti, the land goes with the office to which are also attached the perquisites in kind payable by raiyats and others under the designation of *Aya* or *Miras*. Revenue Officers deal with disputes relating to these lands and to these perquisites. Civil Courts have now no jurisdiction over them. They have not exercised jurisdiction, and it is not the wish or intention of Government to confer such jurisdiction.

Nor can a question of the kind referred to arise as regards the higher offices of shanbhog and patel. The reason is that the *Maniam* lands connected with those offices form no part of the remuneration of the officiator. This may sound somewhat of a paradox to some of my hearers, but a study of the rules relating to the remuneration of patels and shanbhogs, commonly called the Potgi Rules, will enable gentlemen to understand the exact position. Neither am I the expert nor is this the occasion to explain those rules in full detail, particularly as they are rules the greater part of which are worked by the Revenue Settlement Department and not by the Revenue Executive, who concern themselves only with the results. But, I may here submit a few remarks which may facilitate the understanding of those rules and their main features.

The Potgi Rules were first issued under Notification dated 27th October 1874. They were altered by Notification dated 31st August 1900. These alterations necessitated a re-numbering of the rules. Thus re-numbered, the rules were issued under Notification dated 2nd June 1903. The Revenue Manual now in force was issued in 1901. The Potgi Rules there printed are thus, so far as their numbering goes, not in accord with the rules as they stand at present. Now, the key, if I may so call it, of the Potgi Settlement is contained in Rule which is No. XXVIII in the Revenue Manual and No. XXVI in the orders now current. Unfortunately for those who have to study the subject afresh or to refresh their memory of studies in former

days, there is a small but serious error in the rule as printed in the Revenue Manual and in the Notifications both of 1874 and 1903, and this error has been the cause of much misunderstanding. As they stand, the opening words are "the official land under the settlement prescribed in the foregoing Rule." The word 'Rule' is printed in the singular number. It ought to have been in the plural number. Taken in the singular, the meaning would be that it is only the *maniam* land the relinquishment of which has been accepted under the preceding rule, that would form no part of the officiator's remuneration. Taken in the plural number, the meaning would be that the entire group of *maniam* lands dealt with under the entire Potgi Rules would cease to form any part of the officiator's remuneration, directly upon the remuneration being fixed and becoming payable under the Potgi Rules. It is in the plural number that the word occurs in the original set as recommended by Col. Anderson in 1866, and taken in this sense, gentlemen will obtain the key to the position.

The entire group of official lands forms no part of the officiator's remuneration. The amount of his remuneration is fixed according to the scale prescribed in the Potgi Rules. So fixed, it holds good for a term which is now fixed at ten years at a time, after which it may be revised. It is paid in cash from the Treasury or by book adjustment if the officiator has any land revenue of his own to pay. Gentlemen would here ask, what becomes then of the official land? The answer is that its tenure is settled under certain Settlement Rules which also find a place in the Potgi Rules. This settlement is revised once in 30 years along with the revision of the general land revenue settlement of the taluk. The broad features of this settlement are that the lands are left in the possession of the members of the hereditary family who hold them at the time of the settlement. Any alienation of them having been prohibited so far back as in 1835, their possession by strangers is illegal, and the lands are liable to be resumed from such strangers. But when they are held by one or more members of the hakdar's family, possession is not disturbed. The tenure of these lands in the hands of such members is a limited tenure, limited in the sense that the profits arising from these lands up to a limit not exceeding their survey valuation are liable to be taxed by the Sirkar at revision settlements. The proceeds of the tax which, under current or future settlements, the Sirkar levies on these service inam lands, constitute in the accounts of the State some set-off against the expenditure incurred on account of the remuneration of patels and shanbhogs. The settlement of these *maniam* lands is thus distinct from the calculation and payment of the remuneration according to scale, and it is thus that the official land forms no part of the remuneration of the officiator.

In these broad features of the Potgi Rules, gentlemen will find a fair way of giving effect on the one hand to a desire that the families of patels and shanbhogs should enjoy all the prestige which attaches to land endowments, and on the other to the security of tenure which is essential for the better cultivation of these lands and their improvement by the expenditure of capital on them.

In these circumstances, proviso (ii) in clause 11 has to be expunged and this is my proposal.

MR. K. P. PUTTANNA CHETTY.—I beg to second Mr. Ananda Rao's amendment.

MR. S. NARAYANA RAO.—Sir, I beg to propose that the amendment to clause 15, which Mr. Ananda Rao intends moving, be considered with the amendment moved by Mr. Srinivasiengar. The two amendments cannot be separated from each other. They form opposite sides of the same question. Mr. Ananda Rao's proposals to omit proviso (ii) altogether and as a corollary to that, to adopt the amendment to clause 15, may be taken together.

PRESIDENT.—Yes; we had better do so.

MR. T. ANANDA RAO.—Sir, the next proposal standing in my name is to make certain amendments in clause 15. If these amendments be adopted, the clause would read as follows:—

> "15 No Civil Court shall exercise jurisdiction in respect of any claim to succeed to, or to the possession of, any village office, or the emoluments thereof, or any question as to the rate or amount of such emoluments. But when the claim is as between different members of a hakdar's family of patel or shanbhog in respect of land entered in the Government records

or otherwise shown as service inam land connected with the office of patel or shanbhog, such claim may be entertained and adjudicated upon by a Civil Court."

The remarks which I have already addressed to the Council in regard to the Potgi Rules will have prepared the way of Hon'ble Members to my present proposal. Although the restrictions which we have already adopted in clause 5 against alienations and transfers of all sorts, are restrictions which have always existed, yet, as a result of the vicissitudes of time and circumstances attending the devolution of the offices of shanbhog and patel, we find official land wholly or partly in the hands of members of the hereditary family other than the actual worker, and this often-times with the cognizance and sufference of constituted authority. While on the one hand these are not essential for the remuneration of the officiator as already explained, vested interests have on the other hand grown and disputes regarding them arise, which a Civil Court, far better than a Revenue Court, is comptent to deal with. The idea of the superior competency of a Civil Court to deal with them is what prompted the proviso (ii) to clause 11 of the original draft of this Regulation. My proposal aims at giving effect to this idea consistently with the principles of the Potgi Rules already explained. I move that it be adopted.

MR. C. SRINIVASIENGAR.—I beg to be informed whether jurisdiction will be concurrent.

MR. T. ANANDA RAO.—Well, we say "Civil Courts *may* take cognisance." "May" there would mean "shall", as we have already been told. No doubt it is possible to retain all the various cases instanced by Mr. Srinivasiengar in the jurisdiction of the revenue Courts, but popular sentiment will be against it. But when Government does not require the land to fix the remuneration of the officiator, it is well that the case goes to the Civil Court. That is the idea underlying my proposal.

MR. K. P. PUTTANNA CHETTY.—I beg to support both the proposals of Mr. Ananda Rao.

MR. NAGAPPA.—I beg to support Mr. Ananda Rao's amendment. The amendment proposed aims at keeping the lands assigned as remuneration of a village officer in the hakdar's family. These lands were originally granted as service inam lands. These are inalienable without the sanction of Government and are not liable to process of any Civil Court (*vide* Potgi Rule XXXIV, p. 57 of the Revenue Manual).

Government were enabled to secure the services of village officers at a comparatively small remuneration by throwing open to them the prospect of getting valuable lands in the village, assigned as remuneration to them and their family. This policy of Government seems to me to be a laudable one, for it had two-fold advantages. It secured the best lands in the village for the village officer, who by proper cultivation of such lands became a respectable raiyat and thus commanded influence among the villagers and secured their confidence. It also benefited the Government as it secured his services without adequately remunerating him. This system was tried with great success. It would not be expedient or desirable to do away with the present practice by allowing such lands to be alienated to strangers and thus deprive permanently the hakdar's family of the enjoyment thereof.

The wording as it stands seems to my mind to be restricted in its operation. Suppose for instance, the claim is between one member of the family of a hakdar and a stranger; this section will not then apply. Therefore, I would ask the mover of the amendment to add the words "or between members of the family and a stranger." I do not think it is the intention of the Government to leave the land in the hands of the stranger. I think it is their intention to take it back and keep it in the hakdar's family. So, when the claim is between a member of a hakdar's family and a stranger, Civil Courts must have jurisdiction to entertain such suits. The addition of the words I have proposed would cover all the cases instanced by Mr. Srinivasiengar. With these remarks, I beg to support the amendment.

PRESIDENT.—I do not think that the case of wrongful dispossession by a stranger arises at all. Such cases will be dealt with by the rules in which we propose to lay down that service inam lands shall not pass into the hands of strangers. When the dispossession is by a member of the hakdar's family itself, such cases will be dealt with as in the amendment proposed by the First Councillor. If a stranger

is in possession, the revenue authorities will step in and recover the land and restore it to the family or otherwise deal with it.

MR. C. SRINIVASIENGAR.—What will be done if the officiator takes away the land from the hakdar?

PRESIDENT.—His case will come under the amendment proposed by the First Councillor.

MR. SRINIVASIENGAR.—What is to happen in the case of *bonâ fide* disposition, such as Stridhanam?

PRESIDENT.—Clause 23 provides for the making of rules as regards the action to be taken in respect of any unauthorised alienation of the emoluments of a village office. The power to make rules in this respect was inserted for the first time by the Select Committee. In making the rules we can, I think, provide for the action to be taken in cases where the land which is associated with the service of patel or shanbhog has been alienated and is found in the hands of strangers. Will not the power given there suffice for these cases?

MR. C. SRINIVASIENGAR.—But as between the parties, what is the remedy?

PRESIDENT.—As against a stranger, Government steps in and restores the land to the family, and when the claim is between the members of the family, clause 15 amended as proposed by the First Councillor will apply.

Mr. C. SRINIVASIENGAR.—What is to happen when the land has been for generations past in the hands of a distant relation who has been enjoying it?

PRESIDENT.—Government will decide whether they will interest themselves in the dispute.

Mr. C. SRINIVASIENGAR.—Any man who has a little influence in the village can go and take forcible possession and there is no remedy for the man thus dispossessed.

PRESIDENT.—If Government think it worth their while to preserve the land as inam, the rules to be framed under sub-clause (4) of clause 23 will enable them to act.

MR. C. SRINIVASIENGAR.—My contention is that there should be some provision for dealing with the man who for the first time now takes away possession of the land from another man.

PRESIDENT.—If it is a service land and a stranger has dispossessed the man in possession, he can appeal to Government, and Government will take it from the stranger under the rules to be framed under section 23, and restore it to the hakdar's family.

MR. A. RANGASWAMI IYENGAR.—In answer to Mr. Srinivasiengar, I would say that, so far as Inam lands are concerned, there can be no case in which Government is not interested. It may appear to be a dispute between two parties so far as the land itself is concerned, but Government is also interested in a way as it is service inam land. If the President will permit me, I should like to refer to all the amendments proposed and to make a statement of the law as I understand it.

Before the Potgi Rules of 1874 were framed, shanbhogs, patels and other village servants had *maniam* lands for a portion of their remuneration, and they used to receive *aya* or *miras* in addition. Even in those days, there had been alienations by parties of such *maniam* lands, and from time to time, Government used to prohibit such alienations and insist upon the alienations being cancelled and the *maniam* land restored to its original character. But in course of time, in certain cases of vested interests and long possession after alienation, Government condoned such alienation and removed the land from the category of *maniam* lands. The hardship brought to notice by Mr. Srinivasiengar, if the rule about the inalienability of *maniam* lands be enforced in such cases, will of course be recognised by Government as pointed out by the President, and the alienation may be condoned so to speak.

As regards the Potgi Rules, the learned First Councillor referred to them in their two-fold character; he said that in the case of patels and shanbhogs, the Potgi Rules did not at all recognise the possession of *maniam* lands as any part of their remuneration and that the provision as regards the inalienability of such lands should be treated as a distinct matter altogether. But I am not in favor of looking at the question in that view. The rules are somewhat inconsistent in this respect and

have to be construed in such a way as to reconcile the several provisions as far as possible. My own idea is that when the rules were framed, the fixing of the potgi was referred to only in so far as it was necessary to ascertain the amount that was payable to the shanbhog and patel as remuneration for the work done. Formerly, as I have said, shanbhogs and patels were remunerated partly by *aya* and partly by lands. The payment of *aya* was done away with and it was included in the land tax payable by the people, and in order to calculate the amount to be so included, the total remuneration which patels and shanbhogs were to receive was fixed at 3 or 4 per cent on the land revenue collections. The amount represented by the value of the *maniam* lands was allowed for. This, I think, would be a more consistent way of looking at the Potgi Rules. I would therefore say that although the remuneration of patels and shanbhogs was computed in cash, the scope and the real policy of the Potgi Rules was to recognise *maniam* lands also as part of the remuneration and to allow for the enjoyment of such lands by their survey valuation or the difference between the survey valuation and what they call jodi. So it seems to me that it would not be right to say that so far as patels and shanbhogs are concerned, the Potgi Rules did not recognise the possession of *maniam* lands as part of their remuneration. The provisions of the present bill would otherwise be somewhat inconsistent, because it recognises that shanbhogs and patels are in receipt of emoluments which are not paid in cash.

Now I come to clause 5. In this it is provided that the emoluments of village offices shall not be liable to be aleinated or encumbered. Perhaps when this clause was passed, its full force was not recognised by the Council; for, if they had carried it to its legitimate extent, they would have found that every alienation of *maniam* land would be invalid, unless some provision was made by Government under the rules for which authority is taken under section 23; but even then, the rules can only be to give effect to the provisions of section 5, and they cannot be made to over-ride the express policy of the section itself. Therefore it is a question whether even Government can, as it was hitherto doing, condone cases of hardship in matters of alienation of *maniam* lands. I would therefore go back and suggest to the Council whether the absolute terms of Section 5 may not be slightly modified.

I next go to the competing amendments of proviso (ii) to clause 11, sub-clause (1). As was explained by the learned First Councillor, the proviso was borrowed from the Madras Act where *maniam* lands have been enfranchised and are not taken into consideration as emoluments of the office. It must be also remembered that there is a distinction in matters of procedure between Madras and Mysore. In the case of such lands, Civil Courts were given jurisdiction in the Madras Presidency, whereas in Mysore the policy has been to oust the jurisdiction of Civil Courts as regards service inam lands. The latest decision of the Mysore Chief Court that I could lay my hand upon was in a case which was decided in second appeal in 1904, when I happened to be one of the Judges who sat with Mr. Justice Ramachendra Iyer. In that case, a jodidar had brought a suit to recover a land from a shanbhog on the ground that it belonged to him and that the shanbhog had falsely represented that it was his service Inam. It was held by the Chief Court that although Government was not implicated, Government was interested in the *maniam* land being preserved intact; that although the dispute between the two parties was as to the identity of the *maniam* land itself, even that question was one in which Government was interested; and that therefore clause (*a*) of Section 221 of the Land Revenue Code applied and the suit was not cognizable by a Civil Court. I do not think this case has been overruled, although indirectly in another case, it was held somewhat differently. That was decided in September 1905 by a Bench consisting of Mr. Justice Staley and Mr. Justice Nanjundiah. In that case, the final decision did not rest upon the question whether the suit was cognizable by a Civil Court. Even on the merits, it was considered that the man had failed to prove that he was entitled to the land and in the course of the judgment it was held that section 221 (*a*) applies only to suits against Government. That was the point referred to by Mr. Srinivasiengar as having created much trouble. So there is some difference of opinion in the decisions of the Chief Court itself. The policy has been not to recognise the jurisdiction of Civil Courts in such cases, and the balance of opinion would on the whole I think rest with the theory that it is better to continue the existing state of things, that is to say, to hold that Revenue Courts shall have jurisdiction in all cases connected with *maniam* lands, whoever may be in possession thereof, whether one of the members of the hereditary family or a stranger.

If in any case Government thinks that it would cause hardship if the alienation were set aside, it may allow the alienation to slide over and take no notice of it. If it thinks that the alienated *maniam* land is an important one and should continue in the family and that it is undesirable to separate the *maniam* from the office, then of course it may cancel the alienation or insist upon its being cancelled. If these principles are conceded, then I think there will be no occasion for the amendment which stands against the name of Mr. Srinivasiengar. There is no necessity for any provision being made for the recovery of such lands, because Government will have power to deal with them under Section 23. I would therefore vote for the amendment proposed by Mr. Ananda Rao.

With regard to the other amendment moved by Mr. Ananda Rao in respect of clause 15, for the reasons already given, it seems to me that with the omission of proviso (ii) to sub-clause (1) of clause 11, a reference to that proviso in clause 15 may be omitted, and that it would be sufficient to say that no Civil Court shall exercise jurisdiction in respect of suits falling under clause 11. Nothing else would be required and the proviso about suits between different members of a hakdar's family would be superflous.

MR. V. N. NARASIMMIYENGAR.—In connection with the proviso (ii) to sub-clause (1) of clause 11, I had some tussle in the Select Committee with my friend the Revenue Commissioner. I wanted to change the phraseology and make the proviso more clear and understandable. I am not aware of any case in which it would be applicable in Mysore. It has been imported from Madras or Bombay. I am very much in favor of scoring it out altogether. It is very necessary to bear in mind that this Regulation applies to patels and shanbhogs and other village officers also, but the Potgi Rules refer to patels and shanbhogs only. Mr. Ananda Rao, in his amendment to clause 15, refers to patels and shanbhogs only, but we are now legislating for nirgantis, totis and talaris also. Hitherto it has been an invariable rule for Revenue Courts to entertain suits for village offices and to adjudicate upon them, the jurisdiction of Civil Courts being excluded altogether. If a dispute arises regarding a service land, Government is, of course, impliedly implicated. The tenure of the land and the service character of it have always been upheld. In that way the interference of Government would be reasonable and understandable. Revenue Courts would be competent—they have been hitherto competent,—to adjudicate upon such cases. The same officers with the same qualifications and tests man both the Revenue and Civil Courts up to the point of bifurcation, and no objection can be taken on the score of their general fitness. I would therefore altogether exclude from the jurisdiction of Civil Courts all cases regarding claims to village offices of all kind and invest the jurisdiction over them entirely in Revenue Courts. The question was attempted to be solved in the sixties in Mr. Bowring's time. I had something to do with the matter then. As far back as 1868 or 1869, five taluks in the Chitaldrug District were settled by me and registers were prepared and it was intended to enfranchise the service lands of totis, talaries and nirganties in those taluks and assign new lands instead. In the Hiriyur Taluk, where land is poor, I had to assign 500 acres now and then in order to work up to an annual income of only Rs. 24. Assessment is sometimes so low as ½ anna per acre. The idea, however, was not carried out; only registers were prepared for all the five taluks. It is not quite right therefore to say that only good lands remained in the hands of village officers. The reverse was the case sometimes. These lands cannot be changed. The old holdings included also bad lands which could not be cultivated. I know very well that in some taluks, totis and talaris could not cultivate the service lands and so depended upon the cooked food and miras paid by the raiyats. (There has been some correspondence by the Secretary regarding this). My contention is that it is safer, better and easier to vest the jurisdiction entirely in Revenue Courts for the adjudication of all cases affecting village service inam lands.

MR. S. NARAYANA RAO.—After what has been said by the various speakers on the subject, I hesitate to say anything positively, as I have not had much to do with inam lands, but I cannot help giving expression to my thoughts in connection with this subject. As I understand the nature of these lands, it seems to me that service lands held by shanbhogs and patels are still service inams though they are not considered as part of their remuneration. It is still to some extent service inam land, the holder of the office getting the potgi determined on the revenue or jamabandi of the village in which he renders service. And though this land does not form part of the remuneration, yet it is still considered as land attached to the

service and not separated from it. To this extent it should be considered as service inam land, *viz.*, that it should remain in the possession of the family and should not go out of the family, and if necessity arises, the land might be fully assessed and the assessment taken for recoupment to Government for the potgi Government have to pay to the service holder. In this view, that it still forms part, in a certain sense, although not in every sense of the term, of the remuneration of the office holder, the questions which naturally arise are, how far the claims connected with members of the family should be left to be adjudicated by Civil Courts ; and whether all claims and disputes that may arise with reference to these lands should not lie entirely in the hands of the Revenue Officers. The question involved is one of convenience, that is, whether it would be convenient for Revenue Courts to dispose of all such claims or not. If they can conveniently dispose of them, it seems to me that Revenue Officers are the proper persons to decide them. But if they cannot conveniently devote so much time and attention and bring to bear on the questions at issue the learning and research that would be devoted by Civil Courts, and if it is necessary that these questions should be settled with judicial precision, then jurisdiction might be given to Civil Courts. In considering this aspect of the question, we have to remember that Revenue Officers are burdened with various duties. Questions that may arise with reference to these lands are questions of inheritance and partition—mostly questions between parties themselves. Then another class of disputes that may arise is between (hakdars) persons who hold a right to the office and strangers. Questions that arise between strangers and hakdars will be simple questions of lease and other contracts that may have been entered into in reference to the cultivation of the land and so forth. I do not think that a suit between shanbhogi landlord and tenant with reference to inam lands is taken away from the jurisdiction of Civil Courts. It is a question in which Government is not at all interested; it is a question which affects the possession of the land only for a year or two, at the most half a dozen years, under a lease. I am of opinion that under the existing law such a question is not taken away from the jurisdiction of a Civil Court. In suits between members of the family for division of the lands or division of the produce on the ground that they are all hakdars, the interests of Government are involved only to a small extent and the questions that may arise in such suits are more complicated than in the cases contemplated a little while ago. It seems therefore that suits regarding inheritance and partition may conveniently be referred to Civil Courts for adjudication. Alienations being prohibited by clause 5 of the present bill, any alienation to a stranger that takes place contrary to it will be illegal and Government may step in and resume the land summarily from the alienee and restore it to the office-holder. Other questions between members of the family may be safely delegated to Civil Courts. I therefore think that the amendment to clause 15 proposed by the First Councillor may be adopted and that proviso (ii) to sub-clause (1) of clause 11, may be omitted.

MR. K. P. PUTTANNA CHETTY.—With your permission, Sir, I would like to address a few words. I think there is a good deal of misapprehension in the minds of some of the learned members as to the exact meaning of the term "emoluments" as used in the bill under consideration. "Emoluments" means and includes "lands, etc., granted or continued in respect of or annexed to any village office by Government." The idea running in the minds of several of the Honourable Members seems to be that service inams of shanbhogs and patels form part of the "emoluments." It is a mistaken idea. I will read to the Council the exact rule that now obtains on the subject. This is Rule XXVIII of the Potgi Rules, which runs as follows:—

"The official land under the settlement prescribed in the foregoing rule will form no part of the remuneration of the officiator who is to be paid wholly in cash and the land will therefore remain in the possession of the sharer who may at present hold it."

If this cardinal principle is kept in mind, I think it will help us to understand exactly the drift of the provision contained in the present Bill. The service inam lands of patels and shanbhogs do not come under the term "emoluments of office," but those of toti, talari and nirganti do come, and it is to these that Section 5 applies. As regards lands assigned to shanbhogs and patels, they are governed by a different set of rules. Naturally these lands have been rendered inalienable; they are classed as service lands, but they are so only in name. A certain amount of jodi is put upon them which jodi is liable to be increased according to circumstances. This is done

by the Survey Department under a set of rules of which the Council is probably not aware. If this is borne in mind, we may well leave to Civil Courts jurisdiction over cases in which such lands form the subject matter of dispute. Whether the alienation be to a stranger, as pointed out by the President, or to other persons, Government will, if clause 5 applies to it, simply step in and resume possession of the service land and confirm it to the hakdar's family.

MR. C. SRINIVASIENGAR.—I am not very clear about the meaning of the word "emoluments."

PRESIDENT.—If you will pardon my saying so, the mistake arises as pointed out by the Second Councillor in assuming that all the different kinds of emoluments enumerated in clause 4 are attached as remuneration to every village office. The whole mistake arises from that. Land, for instance, is no part of the emoluments of a patel or shanbhog, nor fees in money or agricultural produce. That has been declared in notifications of Government after the introduction of the survey settlement. Fees in money and agricultural produce have ceased to be part of the emoluments of patels and shanbhogs: but with regard to other village officers, I think that, more or less, all these various kinds of payment form part of the emoluments of the office.

MR. M. C. RANGIENGAR.—If the lands do not form part of the emoluments in the case of patels and shanbhogs, why should the bill provide for disputes between hakdars being taken cognisance of by Civil Courts and reserve to Revenue Officers the right to determine disputes between hakdars and strangers? If the lands are not part of the emoluments, and pass out of the family, Government may impose full assessment. So the character of inalienability upon which a great deal has been said is determined.

PRESIDENT.—You are perfectly right. As I have previously pointed out in connection with some other clauses of the bill, there is an anomaly in Mysore procedure. In Madras, when the remuneration was fixed in cash, all the inam lands of patels and shanbhogs were enfranchised and treated as any other kind of land and were allowed to be freely disposed of. In Mysore, they wanted to reconcile the hereditary principle with the efficient discharge of the duties of the pateli and shanbhogi offices and the result is that they have been inconsistent in regard to the tenure of these lands. When these lands were subjected to a jodi, they should have been enfranchised and made the private property of the holder. But they wanted to keep these lands inalienable, because a little privilege was attached to them in the way of being exempt from enhancement of assessment or any tampering with the jodi at a revision settlement. This left a little margin of profit on these lands; and that profit Government thought would be sufficient to invest them with importance. So they said that these lands which had been in the family for generations might continue in the family and not go out of it. But practically they are enfranchised lands and are on the same footing as private lands and it seems desirable to prevent the Revenue Courts from being flooded with suits for the possession of these lands as between members of a hakdar's family. The lands were declared inalienable from a desire on the part of Government to preserve their hereditary character. The Government were not quite logical, I must admit, in their practice and their principle. As remarked by the learned First Councillor in his speech, attempts were made in 1894 and 1895 by Government to carry the principle to its logical conclusion and to declare that the lands, when the additional jodi was put upon them, were the private property of the holders thereof. Again came the idea of preserving the lands to the family as, even when fully assessed, they possessed some value, partly from having been in the family for a long time, and partly because the jodi fixed, although equal to the assessment, would not be interfered with at a revision settlement. But there is no object in ruling that suits as between members of the same family should go to the Revenue Courts; because, in the first place, these Courts are not equally competent with Civil Courts to deal with such disputes, and in the second place, Revenue Courts will be flooded with suits which should properly go to Civil Courts. It is on that account that an exception has been made and a proviso added in the First Councillor's amendment.

MR. M. C. RANGIENGAR.—Has the officiator no connection with the land?

PRESIDENT.—The officiator has no manner of connection with the land. If any authoritative pronouncement is required on the matter, I give it—if any authority

attaches to my opinion—that there is no manner of connection between the emoluments from land and the remuneration payable to the officiator.

MR. M. C. RANGIENGAR.—Clause 5 does not deal with the case of strangers.

MR. B. NAGAPPA.—We need not concern ourselves with strangers.

PRESIDENT.—No. Government will step in and take back the land.

MR. C. SRINIVASIENGAR.—Lands attached to pateli and shanbhogi offices are not emoluments!

PRESIDENT.—We do not say that. That will be settled in the rules.

MR. C. SRINIVASIENGAR.—Clause 5 does not deal with pateli and shanbhogi lands.

PRESIDENT.—It does.

MR. C. SRINIVASIENGAR.—If they are not emoluments of the office, they cannot come under clause 5.

PRESIDENT.—No such declaration has been made anywhere in the body of the bill.

MR. C. SRINIVASIENGAR.—This is intended for the information of the people and must be made clear. Patels and shanbhogs are directly interested in the question whether their service lands come under clause 5 or not. If they do not come under clause 5, the disqualification does not attach to them.

MR. RANGASWAMI IYENGAR.—As I said before, the Potgi Rules are somewhat inconsistent in respect of the question of emoluments. It will be better to give a consistent explanation and try to attach emoluments of land to the office rather than go upon the express wording of the Potgi Rules and say that there will be merely money remuneration. If this is not done, many shanbhogs will say that the emoluments are nothing more than what a common toti gets and that the office is worth nothing.

The original idea of attaching land to hereditary appointments was that the whole family was interested in the *hak* and was to enjoy the land. When the Government made an appointment to any office or appointed an individual to officiate for the time being, they found it hard to enforce the rule that the *maniam* land should go to the officiator alone. A violation of it was permitted on account of compassion or rather consideration for the interests of the other members of the family. I would, in the interest of making the village service important in the eyes of the people and in order to maintain its hereditary character, vote for and strongly urge the necessity of providing for *maniam* lands being inalienable, at least such of them as are now in the possession of the officiator. If it is found that the *maniam* lands do not command sufficient value or rather are not sufficiently valuable as remarked by Mr. Narasimmiyengar, the remedy ought to be the other way. Government should make up and provide other lands as *maniam* and restrict their enjoyment by making those lands the concrete emoluments of the officiator for the time being, so that the man in possession of the office may be in possession of a certain fixed quantity of immovable property so as to enhance his importance and secure his loyalty in the discharge of his duties.

PRESIDENT.—Mr. Srinivasiengar's idea is that land does not form part of the emoluments of an officiator patel or shanbhog.

MR. SRINIVASIENGAR.—Both the Councillors have now explained that it does not form part of the emoluments and so there can be no two opinions on the point. So we have either to modify the Potgi Rules by putting in suitable expressions in accordance with clause 5, or remove altogether from clause 5 the disabilities as to partition, etc.

PRESIDENT.—What we say is, "emoluments" includes "lands, etc., granted or continued in respect of or annexed to a village office by the Government," *i.e.*, the office has annexed to it lands which may be in the posssession of sharers of a hakdar's family.

MR. SRINIVASIENGAR.—Then, there is to be a difference between 'emoluments' and 'remuneration.'

PRESIDENT.—Yes. The lands are emoluments of the office; but there is a separate arrangement between Government and the office-holder. So far as remu-

neration is concerned, we give it in cash, but the lands continue attached to the office all the same. So they are an emolument of the office. They need not go to the officiator. Their profits go to the sharers in whose possession they may be.

MR. SRINIVASIENGAR.—In case Government are disposed to condone alienations, they cannot do so because such condonation is clearly against the terms of clause 5.

MR. S. NARAYANA RAO.—Am I to understand that the full assessment on service lands is not deducted from the Potgi?

PRESIDENT.—The assessment has nothing to do with Potgi.

MR. S. NARAYANA RAO.—Then the lands are separately assessed and the Potgi is fixed under a separate rule and the one is not set off against the other!

PRESIDENT.—Quite so. That being the case, what is the modification you would suggest in respect of clause 5?

MR. C. SRINIVASIENGAR.—Even Government have not taken any serious notice of alienations. When rules are framed hereafter, Government can be as strict as possible in regard to future alienations. If Government were to tie their hands as proposed in clause 5, they cannot budge an inch afterwards. Some reference to the rules hereafter to be framed is necessary in the clause, because the rules cannot form part of the enactment unless reference is made to them in the body of the bill.

MR. ANANDA RAO.—Although I do not like to be extreme but always like to be between the extremes, I should say that logically the possession of service land should be of that person who renders the service. When there is only one hakdar and no other competent man is available in the family, then, either he must serve when the Deputy Commissioner calls on him to do so or he must resign the service inam land. That is the logical meaning which attaches to the tenure of service inam. The question of the enjoyment of the service inam is inseparable from the actual service itself. The sharers who enjoy the lands belonging to the hakdar's family ought to serve Government when there is a vacancy and when the Deputy Commissioner calls on them to serve. That is the logical conclusion. Otherwise what is the meaning of service inam? It is no doubt an extreme principle, but that is the meaning of service inam.

MR. A. RANGASWAMI IYENGAR.—I am not quite convinced from the discussions that have taken place that the whole Council or the majority are disposed to entirely cancel the idea that these hereditary offices should have *maniam* lands attached to them.

MR. C. SRINIVASIENGAR.—So far as I understand, the idea seems to be to retain and not to cancel the existing *maniam* lands attached to village offices. These lands form part of the emoluments of the offices.

PRESIDENT.—I do not quite catch Mr. Rangaswami Iyengar's meaning.

MR. A. RANGASWAMI IYENGAR.—I mean that, so far as I understand, *maniam* lands are attached to hereditary offices. I went one step further and suggested that the *maniam* lands in the possession of the hakdar's family should be attached to the officiator for the time being. The mere fact that these *maniam* lands are attached to the office in the sense that some member of the family however remote should be in possession of them without reference to the performance of the duties of the office itself is not a sufficiently logical enforcement of the principle that *maniam* lands should be attached to the office. I suggest that the opinion of the Council be taken on the question that a portion of the *maniam* lands which are now attached to the office as emoluments should form the remuneration of the officiator for the time being; it should not be alienable and it should be invariably attached to the man who is the time being officiating in the village office. We may leave alone whatever has already taken place. There is no practical benefit in going on subdividing and subdividing the lands. What I say is, either we must wholly leave the lands out of the office account as contemplated in the potgi rules, or say that the officiator in the office it may should have a portion of the *maniam* lands. We do not know what portion may be a be. In some cases it may be the entire portion, and in other cases it may be a portion scattered in different places. However, it will be in the interest of the hereditary service that the *maniam* lands should go with the officiator for the time being.

MR. C. SRINIVASIENGAR.—You say we need not take into consideration things

which have already taken place and that for the future suitable rules may be made by Government.

MR. A. RANGASWAMI IYENGAR.—The rules allow the lands to remain in the possession of a member of the family, however remote. Now suppose that the *maniam* lands are enjoyed by a family of hakdars which is not in possession of the office. In this case, how is the partition of the lands to be prevented or succession regulated among the members of that family?

MR. C. SRINIVASIENGAR.—They cannot partition the lands and, if they do so, Government will take such notice as may be required.

MR. RANGASWAMI IYENGAR.—Suppose the fourteenth cousin of the officiator is in possession of the *maniam* lands; when he dies, who is to be in possession of them? Are his sons to enjoy them?

PRESIDENT.—Of course, the sons enjoy them.

MR. RANGASWAMI IYENGAR.—How are they to enjoy them?

PRESIDENT.—As private property.

MR. RANGASWAMI IYENGAR.—Then, there will be no prohibition against alienation or enjoyment by others or partition.

MR. SRINIVASIENGAR.—The rules will lay down that in future *maniam* lands should not be divided or alienated.

MR. RANGASWAMI IYENGAR.—How are they to be enjoyed then?

MR. SRINIVASIENGAR.—All of them must enjoy the lands without partitioning them. The lands should remain intact.

MR. RANGASWAMI IYENGAR.—I only point out the difficulty. I think that clause 5 should be modified to a certain extent so far as alienations are concerned.

MR. NAGAPPA.—We may then say "subject to rules to be framed under Section 23, the emoluments . . . encumbered . . . "

MR. RANGASWAMI IYENGAR.—We may insert the words "without permission of Government" after the word "whatsoever." Whether there is any use in reserving such a power, especially having regard to the policy as enunciated in this Council by the President, is quite a different matter.

MR. NARAYANA RAO.—An extreme instance which may not at all occur is this; suppose the present hakdar to a shanbhogi office does not hold the office, and all the other members of the family say that they don't want to hold the office. Will the family be permitted to retain the *maniam* lands? Suppose then Government appoint a third person to the office. Will the hakdar's family be dispossessed of the lands?

PRESIDENT.—The office has nothing to do with the lands. They have been practically enfranchised and made private property. It is from a desire to maintain the hereditary principle in regard to lands handed down from generation to generation that the lands are required to be retained in the family.

MR. NARAYANA RAO.—Is it then to be understood that the new comer is not entitled to the lands, and that there will be a complete divorce between the lands and the office?

PRESIDENT.—Yes.

MR. AMIR HASSAN.—I know of instances in which the *maniam* land is sold by Government for arrears of revenue.

PRESIDENT.—There has been much conflict in carrying out the principle. I think it is not possible to restrict the rights of sharers in the property by saying that it should be kept among themselves, and that it should not be partitioned among the members of the family in cases of succession, etc.

MR. ANANDA RAO.—Then what is the meaning of service inam?

MR. PUTTANNA CHETTY.—It is a fiction.

PRESIDENT.—We have already dealt with clause 5. If the Hon'ble Members agree, we will take up this clause after we have passed through the other clauses of the bill; and consider the suggestions made by Mr. Srinivasiengar (*viz.*, introducing in clause 5 a reference to the rules to be framed under clause 23) and by the Revenue Commissioner (*viz.*, about partition and alienation being allowed with the

permission of Government). The amendments proposed by the Senior Councillor in respect of clauses 11 and 15 appear to be suitable and to meet the requirements of the case. If the Hon'ble Members are prepared to adopt them, we will do so and proceed with the consideration of the next amendment.

MR. SRINIVASIENGAR. —That is, the omission of the proviso?

PRESIDENT. —Yes; and the understanding will be that there shall be no restriction as suggested by the Senior Councillor; that is to say, all civil rights will attach to the land, there may be partition, there may be succession, and there may be suits in regard to adoption, etc. The only thing that will not be allowed is alienation out of the family. In other words, all the incidents of regular enfranchisement will be attached to the land, but with the single limitation that it shall not be alienated out of the hakdar's family, present or past.

MR. M. C. RANGIENGAR.—I believe the property will remain in the family, and in that family it will be allowed to be alienated. It cannot be sold out of that family.

PRESIDENT.—Yes. This is not an enunciation of any new principle. No innovation is attempted at this stage. I am simply declaring the existing law on the point. If the Council agrees, we shall take up this amendment later on.

Mr. V. N. NARASIMMIYENGAR.—I think it refers to shanbhogs and patels and not to nirgantis, totis and talaris.

PRESIDENT.—Yes. It cannot refer to nirgantis, totis and talaris. We leave the right to the land to be contested in a Civil Court; only we say that the suit is to be between the members of the family. There will be no preferential right of one branch over another branch. But the character of the tenure of the land is not changed. That character always attaches to it. With this condition attached, namely, that it shall not pass out of the hakdar's family, we leave disputes relating to it to be decided by a Civil Court. Only in the case of patels and shanbhogs the land does not form part of the remuneration, while in the case of nirgantis, totis and talaris, it does.

MR. NARASIMMIYENGAR.—We say that service inams in the families of patels and shanbhogs are not to be partitioned, etc., but we say that they do not form part of their remuneration. What, then, is the object of this kind of prohibition?

PRESIDENT.—If we legislate on the subject, we will be interfering with the settlements now in force.

MR. SYED AMIR HASSAN.—As I said before, such lands have been fully assessed and sold from hand to hand for arrears of revenue.

PRESIDENT.—That is an administrative question which we may deal with separately and it is possible to declare that all these lands shall be treated as if they had been enfranchised. I will have selections from the records of Government published: especially now that the question has been so much agitated, it is well that the public should know the facts fully. This question had been taken up in 1894 and ultimately the Government said that they were not prepared to interfere with the existing practice.

MR. SRINIVASIENGAR.—There is a great deal to be said on both sides.

PRESIDENT.—It will be curious for you to know that it was Col. Grant who said that the present arrangement should continue.

MR. NARAYANA RAO.—I remember that this question once came up before Mr. Chentsal Rao and Mr. Thumboo Chetty for decision. The question was, when the land did not form part of the remuneration of the shanbhog, why it should not be liable to be attached and sold in execution of a decree and whether an attachment of a certain *manium* land by the Civil Court was not valid. I believe that Mr. Chentsal Rao was for declaring the validity of the attachment and sale, but Mr. Thumboo Chetty held the opposite view. Finally the Government seems to have supported Mr. Thumboo Chetty.

MR. SRINIVASIENGAR.—The Dewan (Sir K. Sheshadri Iyer) supported Mr. Thumboo Chetty. He held in concurrence with Mr. Thumboo Chetty that the land was not liable to be attached. The Government has been throughout consistent there.

By direction of the President, the Secretary read Col. Grant's letter referred to above.

MR. ANANDA RAO.—The upshot of all these discussions was the small modification made in 1900.

The amendment of Mr. Ananda Rao to omit proviso (ii) to sub-clause (1) of clause 11 was put to the Council and was carried unanimously.

PRESIDENT.—As regards what fell from the Revenue Commissioner, it is entirely a new idea and not a declaration, as far as I can see, of any existing principle regulating the remuneration of village officers, or concerning the character of the lands attached to the offices of patel and shanbhog. The idea that such of the lands as may happen to be in the possession of the existing officiator may be recognised as part of the remuneration of the office and made inalienable from the office is a new one altogether. It may be considered as an administrative question, but it has not much bearing upon the legislation with which we are now dealing, as this legislation only declares the existing law and practice and does not propose to make any changes in them. So, with this understanding that later on we will introduce modifications in clause 5 of the bill, the amendment proposed by the 1st Councillor as regards clause 15 may be considered by the Council.

The amendment having been put to the Council was carried, the votes being 8 *for* and 4 *against*.

The verbal alterations proposed by the 1st Councillor in clause 11, sub-clause (1), *viz.*, the substitution of the word "that" for "as follows" after the word "provided" and the omission of figure (i) were adopted unanimously.

PRESIDENT.—We will now consider the amendment proposed to be moved by Mr. Srinivasiengar in respect of clause 11, sub-clause (2), namely, that the words "or in the case of a minor for registry as successor" be inserted after the words "eligible for appointment."

MR. SRINIVASIENGAR.—I withdraw this amendment.

CLAUSE 11 A.

PRESIDENT.—The next amendment is that standing against Mr. Ananda Rao's name, namely, the addition of a new clause after clause 11.

MR. ANANDA RAO.—Sir, I beg to move that the following new clause be inserted in the bill. It is as follows:—

"On a complaint being preferred by a nirganti, toti or talari of non-payment of the *miras* payable under rules framed under Section 23 by any holder of land or other person from whom such contribution is due, the Amildar or the Deputy Amildar of the Taluk or Sub-Taluk shall hold a summary enquiry in the manner laid down in the Land Revenue Code, Regulation IV of 1888, and pass a decision thereon; provided that the complaint is made in the year in which such *miras* is due or in the year immediately following it."

I call it 11 A for the present to indicate its position and it can receive its proper number by and by. Without a provision of the kind which I propose, it will be necessary for the minor village servants, *viz.*, toti, talari and nirganti, to bring a regular suit in every case in which a raiyat withholds from them the *Aya* or *Miras* (as the perquisites in kind are called) due under standing orders and the custom of the country. A regular suit in such cases is equally cumbrous, expensive and unnecessary. A simple complaint, a summary enquiry and adjudication are all that are called for, and this is what the proposed clause provides for. It is very much in the terms of the existing rule and procedure as shown at page 60 of the Revenue Manual of 1901. As the perquisites would be of small value in each case, and the evidence relating to it is liable to deteriorate by time, a time limit is prescribed, so that the complaint should be made in the year in which the perquisite is due or in the year immediately following. The proposed clause is otherwise self-explanatory and I trust that it will commend itself to the Council.

MR. KANTHARAJ URS.—I beg to second this amendment.

MR. SRINIVASIENGAR.—If according to custom *miras* is due to them, then I think the amendment is all right. If the payment is due, then it can be enforced as provided in the amendment. The rules contemplated will provide for payment being made.

MR. RANGIENGAR.—Can a toti, talari or nirganti of an alienated village complain to the Amildar and recover the miras due? It will be a case between master and servant.

MR. ANANDA RAO.—That is exactly what is intended. But it won't be a suit between master and servant.

PRESIDENT.—As this point has been so prominently brought forward by Mr. Rangiengar, a note will be made of it and it will be considered at the time of framing the rules.

MR. RANGIENGAR.—Does Government contemplate fixing an institution fee on suits filed in Revenue Courts, and if so, is it to be an *ad valorem* fee?

MR. SRINIVASIENGAR.—The fee fixed for such suits is ten rupees.

MR. RANGIENGAR.—In some of the cases which I had to conduct, the Deputy Commissioner insisted upon payment of an *ad valorem* fee, where the office of shanbhog was in question.

PRESIDENT.—It is for the Revenue Commissioner to consider this question.

The amendment proposed by the First Councillor was put to the Council and was agreed to.

PRESIDENT.—The next amendment is that which relates to old clause 12 of which Mr. Nagappa has given notice.

MR. NAGAPPA.—Before taking up this amendment, there is another amendment which I withdrew last time with the permission of the Council to bring it forward when clause 11 was dealt with; I now ask that I may be permitted to move that amendment. It is as follows:—

"A certificate of heirship or a decree of a competent Civil Court shall until revoked or set aside be conclusive proof of the facts stated or determined in such certificate or decree."

MR. SRINIVASIENGAR.—I think this was considered when the question of adoption was brought forward.

MR. NAGAPPA.—There is a provision in the Land Revenue Code similar to the one I have proposed. I therefore move that an express provision may be made in this bill also.

MR. RANGIENGAR AND MR. RANGASWAMI IYENGAR.—The amendment will apply only to summary procedure. There is no summary procedure with regard to suits.

MR. NAGAPPA.—Then, I beg to withdraw this amendment.

The amendment proposed was accordingly allowed to be withdrawn.

The Council adjourned to the next day (24th March 1908).

TUESDAY, 24TH MARCH 1908.

The Council met at 3 P.M.

All present.

CLAUSE 5.

PRESIDENT.—Yesterday when we closed the proceedings, the idea was to take up clause 5 and make the necessary amendments in it. Mr. Srinivasiengar had kindly undertaken to draft them. I believe that all the members are in possession of copies of the three alternative proposals which he has suggested. Mr. Srinivasiengar will kindly explain them to the Council.

MR. C. SRINIVASIENGAR.—Sir, at yesterday's meeting of the Council, we had occasion to revert to clause 5 of the bill now before us, and it then appeared to the Council that in the absence of all reference in it to Government sanction as in the Potgi Rules and to rules under Section 23 as now contemplated, that clause would be somewhat defective and unsatisfactory. I was asked to draft an amendment on the lines of the discussion that took place here yesterday. I have accordingly prepared three alternative drafts which I will presently read to the Council.

The first alternative is:—

(1) "Insert either at the beginning of clause 5 or after the word 'whatsoever' in the 8th line of it the following words, *viz.*, 'without the sanction of Government and save as further provided by rules made under Section 23.'"

The clause with the proposed addition made would read thus :—

"Without the sanction of Government and save as further provided by rules made under Section 23, the emoluments of village offices, whether such offices be or be not hereditary, shall not be liable to be transferred, partitioned, or encumbered in any manner whatsoever, and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof."

This would be all right as far as it goes. But it is possible that there might be a misapprehension on the ground that the qualification governs the latter portion of the clause as well as the former and therefore the new words may be inserted preferably before the words "and it shall not be lawful." In this draft, *viz.*, the first alternative, are only dovetailed a few words suggested at yesterday's meeting and therefore no further explanation from me seems called for.

The second alternative is shorter and perhaps reads better. It is a reproduction of a portion of the Potgi Rule XXXIV. With the addition of the words I have just mentioned, the clause would read as follows :—

(2) "The emoluments of village offices, whether such offices be or be not hereditary, shall not be alienated or assigned to any person whatever without the sanction of Government and save as further provided by rules made under Section 23; nor shall they be liable to the process of any Court."

In deference to the opinions expressed yesterday by two of my learned colleagues on the other side of the table for whose long experience I have the highest respect, I have tried in my third alternative to meet their views half way, *i.e.*, as far as I could go with due regard to past history and future requirements, and consistently with the desire of one and all here to abstain from the infliction of any avoidable hardship. That draft reads as follows :—

(3) "Clause 5 to remain as it is, with the following addition :—

'Provided that

(*i*) Nothing contained in this section shall be deemed to affect transfers or partitions as between different members of a hakdar's family made, or which may hereafter be made, with the previous sanction of Government; and

(*ii*) Other alienations effected before the coming into force of this Regulation shall be subject to the operation of the rules made by Government under Section 23.'"

Clause 5 will remain as it is. The prohibition against alienation, partition and encumbrance will remain intact and there will be added to it two provisos in the terms expressed above.

A word or two by way of explanation seems to be necessary in this connection. The first and second alternatives contemplate and provide for future alienations as well as past alienations, irrespective of the nature of the transaction and of the parties concerned, the only condition attached being Government sanction and adherence to Rules under Section 23; while the third alternative provides only for transfers and partitions and that too only in the case of members of the hakdar's family. The clause, as it is will hold good and therefore there will be no law authorising future alienations except such alienations between members of the hakdar's family as might be made after obtaining the previous sanction of Government.

It will be seen that the first and second alternatives are more liberal than the last one; but, after full consideration, I am inclined to think that the circumstances of the case do not require any such liberality on the part of the Government or the legislature, and that the third alternative will meet all reasonable requirements. I would accordingly commend it to the acceptance of the Council, our chief concern being to abstain from interfering with vested or supposed vested interests and not to encourage the creation of future rights not allowed by law. If this last draft is passed, there can be no real grievance, because we shall be simply giving effect to what has been all along understood—that except in so far as the families immediately concerned go, there can be no change of lands from one party to another, the reason being that such lands are service lands and should go with the office or go to persons who are in some way connected with the office. In either case, much will be left to the rules which, I am sure, will be conceived in a liberal spirit so as to minimise interference with vested rights and interests. As regards future alienations, the draft reiterates the existing law and discountenances such alienations except to a very limited extent. So far there can be no reasonable objection to it. It is only to alienations that have already taken place—for which Government agency has been no less to blame than the parties concerned—that any indulgence has to be

shown by Government, and as I appealed to Government in another connection yesterday, I would ask that in framing rules these circumstances may be borne in mind so that no undue hardship may be inflicted upon the people concerned. The cardinal principle is that indiscriminate transfers of service lands from hakdar's families should not be allowed and that unnecessary dismemberment of such lands in the families themselves should not be encouraged, and this principle will be sufficiently complied with by the third alternative which I have now the honour of submitting for discussion at this meeting.

MR. M. KANTHARAJ URS.—I beg to second the adoption of the third alternative proposed.

MR. S. NARAYANA RAO.—From the discussion that took place, the impression left on my mind was that under the present law applicable to lands attached to the offices of toti, talari and nirganti, the person who holds the office for the time being will be entitled to be in possession of the whole land attached to the office and any arrangement made amongst the members of the family as to partitioning will not be allowed and the land will be summarily resumed and restored to the office-holder for the time being; but that with reference to the lands attached to shanbhogs' and patels' offices, partitions and divisions already effected will be left untouched and future partitions and sub-divisions will alone be prohibited. It was to meet this exposition of law that an addition to clause 5 was intended to be introduced; because, without any qualification to clause 5, it would make no difference between lands attached to the offices of toti, talari and nirganti on the one hand and lands attached to the offices of shanbhog and patel on the other. As the rules on this subject at present are rather obscure and not clearly understood, it was intended to make this point clear by adding a sub-clause to clause 5, so as to comprehend the principles applicable to these two different sets of offices. I do not know if I have made myself clear on this point. I wish to repeat once more that I distinctly understood that with reference to lands attached to toti, talari and nirganti, no separation of the lands from the office and the performer of the office for the time being will be allowed and that if it has taken place in the past, such lands will be summarily resumed and restored to the office-holder when the Government comes to know of the alienation; but with reference to shanbhogi and pateli lands, the sub-divisions made among members of the family by agreement among themselves, as to the enjoyment of different portions by different members, will be allowed to remain undisturbed, but only future sub-divisions will be prohibited. It was, I think, to comprehend these principles that a proviso was required to be added to clause 5. It seems to me that none of the three different alternatives now placed before the Council makes this distinction between the two sets of offices and that it is necessary to differentiate them.

If what I have just said be the correct principle which should guide us in legislating with reference to those lands, it seems to me that clause 5 as at present framed by the Select Committee may be allowed to remain with the addition of the following two provisos, *viz.*—

"(*i*) The lands attached to the offices of toti, talari and nirganti cannot be separated from the offices and any partition or alienation thereof will not be recognized.

(*ii*) The lands attached to the shanbhogi and pateli offices which have been already partitioned among the members of the hakdar's family will not be disturbed but further partitions or alienations from the family are prohibited."

The addition of these two provisos will meet the requirements of the case and I hope that this amendment will commend itself to the Council.

PRESIDENT.—With regard to the first alternative of Mr. C. Srinivasiengar, has any Hon'ble Member to make any remarks?

MR. C. SRINIVASIENGAR.—I request you, Sir, to first draw the attention of the Council to the last alternative. That is the one that has been seconded.

MR. B. NAGAPPA.—It will be better to consider and discuss all these amendments together.

PRESIDENT.—Yes, we may take them all together.

MR. T. ANANDA RAO.—It is difficult to divine what variety of cases may arise or what vested interests have grown out of departures from rule more or less counte-

nanced by local officers. So it is quite possible that I do not realise the various classes of cases that would come under one or other of the alternatives. So I speak with diffidence, and that diffidence makes me fall back upon words and phrases to which I am accustomed. That is a safe principle by which to be guided. The second alternative proposed by Mr. Srinivasiengar corresponds to the rules now in force, and I would therefore second it.

MR. C. SRINIVASIENGAR.—I beg you will permit me, Sir, to withdraw alternatives 1 and 2 because I am myself diffident about them; but as regards 3, I stand on surer ground.

MR. T. ANANDA RAO.—I do not know whether that can be done now. So, being rather sceptical as to the classes of cases and not knowing them, I prefer the second alternative, because it corresponds to the existing Potgi Rules. The only possible objection is that, being a Potgi Rule which relates to patels and shanbhogs, it would cover nirganti, toti and talari offices, if it be adopted here. But I don't think that it would cause any complication and therefore I second it.

MR. B. NAGAPPA.—May I ask whether the sanction of Government is required in respect of lands attached to pateli and shanbhogi offices, which have to be partitioned or divided among the members of the hakdar's family?

MR. C. SRINIVASIENGAR.—Under the Potgi Rules, sanction is required.

MR. B. NAGAPPA.—But, in practice, it is not so. If the land is in the hakdar's family, Government does not interfere; but if in the hands of a stranger, Government will interfere.

MR. C. SRINIVASIENGAR.—It is left to Government, in administering the rules, to give or refuse sanction.

MR. B. NAGAPPA.—From what fell from the President I understood that all such lands are to be treated as private property. In practice, we see so many lands being partitioned among hakdars and no objection seems to have been taken to such partitions being effected. The hakdars enjoy the lands peaceably. That seems to have been the practice hitherto.

MR. C. SRINIVASIENGAR.—Even now the lands will not be taken away.

MR. B. NAGAPPA.—Suppose there are four brothers. Can they divide the service lands among them without the sanction of Government?

MR. C. SRINIVASIENGAR.—If, without previous sanction, the lands have been divided, Government in administering the rules will consider whether the division may be sanctioned or must be set aside.

PRESIDENT.—When land is assigned as remuneration for the office, it shall not be partitioned. In regard to patels and shanbhogs, a distinction has to be drawn between land and cash. Whatever is assigned to the officiator, that shall not be interfered with, partitioned or alienated. But these restrictions do not apply to land that does not go with the office—that was hitherto attached to the office, but is now separated from it.

MR. B. NAGAPPA.—May I take it then, that these restrictions apply only to the service inam lands of totis, talaris and nirgantis?

PRESIDENT.—Among the matters in respect of which the bill gives power to Government to frame rules under clause 23 are, (1) the action to be taken in respect of any alienation of emoluments contrary to the provisions of clause 5 (para iv), and (2) the emoluments to be assigned to the holders of village offices and the method of assessment and payment thereof (para vii). I believe it is open to Government under the latter para to declare what the emoluments assigned to the holders of village offices are. It will be there made clear that land does not form part of the emoluments assigned to the holders of the village offices of patel and shanbhog. That being so, we have now to consider how the proviso to clause 5 should be framed. The emoluments declared to be assigned to holders of village offices have to be considered separately from the emoluments attached to these offices. Service inam land, for instance, attached to the office of patel or shanbhog would not come under the head of emoluments assigned to the holders of those village offices. So, partition and transfer of such lands may be freely allowed. The rules framed by Government will only declare that the land does not form part of the emoluments of the holder of the

office. Should we not say something in clause 5 on the lines of what the Government Advocate suggested? The expression used in clause 5 is a general one *viz.*, "emoluments." The clause as proposed to be now amended by the third alternative of Mr. Srinivasiengar would apply to lands attached to the offices of patel and shanbhog also. But the existing practice and policy in regard to these lands is to leave their partition and transfer as between members of the hakdar's family untouched and unaffected. Sanction of Government is not required for such partition or alienation between members of the hakdar's family. So I suggested to Mr. Srinivasiengar to improve the wording of the clause so as to allow partition and transfer among members of the hakdar's family in the case of lands attached to the offices of patel and shanbhog.

MR. C. SRINIVASIENGAR.—Then there is no need to make any provision at all with reference to shanbhogi and pateli lands as they will be dealt with by the rules to be framed under clause 23. We all understood that clause 5 was general and applied to all emoluments.

MR. S. NARAYANA RAO.—There is another difficulty. Though lands attached to shanbhogi and pateli offices are not strictly emoluments, yet if they are continued to be annexed to the office, they would be considered to be emoluments. I would invite your attention to the words of clause 4 defining "emoluments" and specially to the words "granted or annexed." So, though the lands may not be considered as part of the officiator's remuneration or taken into consideration in fixing his pay, salary or remuneration, yet if they continue to be annexed to the office and are not completely severed from it, they would form part of the emoluments of the office, and the term "emoluments" used in clause 5 must be taken in the same sense throughout. We cannot take the term in its full signification in construing clause 5 and use it in a restricted sense in framing rules under clause 23, para 7. In framing rules we cannot go beyond the express terms of the enactment itself by excluding land from the term remuneration or emolument.

PRESIDENT.—The object of the rule is to define what shall be the emoluments which are assigned to the holder of the office in each instance.

MR. S. NARAYANA RAO.—Then we shall be landed in another difficulty. If in the rule we say that the lands attached to the offices of patel and shanbhog are not emoluments of those offices, but yet they continue to be annexed to them (because we must say that the lands continue to be attached to the offices in order to prevent their alienations), then as long as they so continue to be attached, they would come under the definition of emoluments as laid down in clause 4.

PRESIDENT.—But they are not assigned to the holder of the office. That is the distinction drawn in the rule. As regards patels and shanbhogs, lands are emoluments; they are attached to the offices of patels and shanbhogs. But, in the rules to be framed, we will say that lands are not emoluments assigned to the holder of the office.

MR. S. NARAYANA RAO.—Whether assigned or not assigned to the holder of the office, they come under the prohibition of clause 5. Distinction should be made between lands attached to toti, talari and niganti offices and lands attached to pateli and shanbhogi offices.

PRESIDENT.—We make an exception in the case of lands attached to pateli and shanbhogi offices. The prohibition will hold good in the case of the lands of toti, talari and nirganti. The general clause will govern the cases of toti, talari and nirganti, but an exception will be made in the case of lands attached to the offices of patel and shanbhog and not assigned to the holder.

MR. SYED AMIR HASSAN.—If the inam land is found useless by the holder of the office of toti, talari or nirganti, can he relinquish the land?

PRESIDENT.—The question of remuneration is one between Government and the village servant.

MR. S. NARAYANA RAO.—Proviso (i), third alternative, is, "nothing contained in this section shall be deemed to affect transfers or partitions as between different members of a hakdar's family." I think a distinction should be made there between the lands of pateli and shanbhogi offices and those of toti, talari and nirganti.

PRESIDENT.—Yes, we will make the distinction in the proviso. According to

clause 5 as amended by the Select Committee, there can be no alienation of the lands even among holders.

MR. K. P. PUTTANNA CHETTY.—The lands go with the office. Why should any alienation be permitted? There ought to be none at all. The principle is to keep the lands inalienable.

MR. M. C. RANGIENGAR.—The difficulty arises in applying logical principles to an illogical set of circumstances.

MR. K. P. PUTTANNA CHETTY.—We have to legislate according to present practice and procedure.

MR. M. C. RANGIENGAR.—May I know if clause 5 is intended to have retrospective effect? If not so intended, alienations and partitions effected before this Regulation comes into force will remain unaffected by it.

PRESIDENT.—But if they have been assigned as remuneration for village offices, we will have to resume such lands.

MR. M. C. RANGIENGAR.—Then you put in force the Potgi Rules. Alienations already effected are governed by the Potgi Rules. After the passing of this Regulation, the Potgi Rules will cease to have force.

PRESIDENT.—Then we have to reproduce the Potgi Rule in this enactment.

MR. M. C. RANGIENGAR.—Then I think clause 5 will have to be recast entirely.

PRESIDENT.—But why should we not introduce in clause 5 a proviso to the following effect:—

"Provided that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed under Section 23, nothing contained in this section shall be deemed to affect transfers or partitions as between different members of a hakdar's family?"

MR. K. P. PUTTANNA CHETTY.—This will apply only in the case of patels and shanbhogs. The prohibition will be absolute in the case of all others.

PRESIDENT.—As regards alienations effected before the coming into force of this Regulation, Government have taken power under para (iv) of clause 23 to make rules as to how to deal with them. So, the second proviso in Mr. Srinivasiengar's third alternative may be omitted altogether.

MR. M. C. RANGIENGAR.—It would be better to say "declared to be assigned" in the proviso that has now been suggested. What will be done under clause 23 is more by way of declaration.

PRESIDENT.—Both with regard to lands attached to patels and shanbhogs and emoluments generally, they will be dealt with under para (iv) of clause 23, when they happen to be alienated. It is only with regard to transfers and partitions as between members of a hakdar's family of lands attached to the offices of patels and shanbhogs that we recognize the existing transfers and partitions and allow future transfers and partitions also without sanction.

MR. K. P. PUTTANNA CHETTY.—Proviso (ii) in Mr. Srinivasiengar's third alternative is not necessary. Alienations effected before the coming into force of the present Regulation will be governed by the rules then in force.

PRESIDENT.—The second proviso seems unnecessary. The first proviso with the amendment just suggested will read thus:—

"Provided that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed under Section 23, nothing contained in this section shall be deemed to affect transfers or partitions as between different members of a hakdar's family."

MR. M. C. RANGIENGAR.—Is there any object in omitting the word "encumbered" in the proviso?

PRESIDENT.—We may put in "encumbered" also. Mr. Srinivasiengar will please consider if he cannot put this as his amendment.

MR. SRINIVASIENGAR.—I beg to propose that the following proviso be added to clause 5:—

"Provided that in the case of lands which are not assigned as emoluments to the holder of a village office under rules framed under Section 23, nothing contained

in this section shall be deemed to affect transfers, partitions or encumbrances as between different members of a hakdar's family."

MR. B. NAGAPPA.—I beg to second the proposition.

The proposition was put to the Council and was carried, the votes being 11 *for* and one not voting.

CLAUSE 15.

MR. C. SRINIVASIENGAR.—With the permission of the President I would like to say a few words with regard to the amendment of clause 15 which was proposed and carried yesterday and with reference especially to Civil Courts being given jurisdiction in the cases contemplated therein.

The wording of proviso (ii) to sub clause (i) of clause 11 copied from the Madras Act having been held to be unsuitable to Mysore, I thought yesterday that some provision was to be made somewhere for the entertainment of suits. The question was what sort of suits were to be held to lie and by what Court they should be adjudicated upon; and I brought out practically a long list of cases which might possibly come before the Courts for decision and I proposed that all those cases should be handled by the Revenue Courts. Mr. Ananda Rao brought forward simultaneously another amendment in which the litigation contemplated was limited to disputes between members of a hakdar's family and it was also proposed in that amendment that Civil Courts might take cognisance of such suits. My amendment involved a number of matters, while the other involved a single matter; and the question resolved itself into what Court should deal with that matter. I do not know if the point thus narrowed was prominently brought to the notice of the Council here. At any rate, I have long been of opinion and I continue still to be of opinion that all cases relating to service land annexed to a village office should be adjudicated upon by Revenue Courts. I have not heard of any complaints of injustice, and though my lawyer friends seem to say that Civil Courts are better suited to try these cases, I really do not know how Revenue Courts are incompetent. Our revenue machinery is quite as good as our Civil Courts; evidence is taken similarly; parties and witnesses are heard; if parties wish to be heard by Advocates, this is also allowed; from an order passed by an Assistant Commissioner an appeal lies to a Deputy Commissioner; from a Deputy Commissioner's order there is an appeal to the Revenue Commissioner who is the Chief Controlling Revenue authority. Second appeals are also allowed in the case of village offices. Provision has been made for reference to Government in cases of doubt or Government of its own accord can call for records and revise the orders of subordinate officers. They can refer cases to the Chief Court. So that it will be seen that the whole machinery is complete in itself and to my mind no change is called for. I don't know if my colleagues here know of any instances in which people have greater confidence in Civil Courts than in Revenue Courts. So far as I understand, I think Revenue Courts can deal with such cases more expeditiously and with less cost and inconvenience to parties. In these circumstances, and regard being had particularly to the fact that till now there has been no reflection on Revenue Courts, I beg to urge that the transfer decided upon yesterday may be reconsidered and I earnestly hope that the Council will give its best consideration to this. There is no object to be gained by this transfer and there is no reason why the suits should not be left to be dealt with by Revenue Courts as heretofore.

As regards complex questions and intricate points of law being involved, they cannot arise any more in suits between hakdars than in other suits to the office. Revenue authorities are given power to dispose of such latter suits and when an officiator or a person who claims the office as well as the emoluments attached to the office can expect justice at the hands of Revenue Courts and when such cases do not involve points beyond the competence of such Courts to decide, I am really at a loss to know what peculiarly complicated questions might arise as between hakdars to justify the contention that such cases cannot be adequately and properly adjudicated upon by Revenue authorities and that therefore a resort to the Civil Courts is necessary.

MR. NAGAPPA.—I beg to oppose the amendment.

PRESIDENT.—No, it is not an amendment. But in view of the complexity of the question, it is as well that we consider the subject from all stand-points.

MR. C. SRINIVASIENGAR.—Messrs. Nagappa and Rangiengar have appeared before Deputy Commissioners and I do not know if they ever found that the Revenue authorities were wanting in the capacity for decision of such cases. While such is the case, I do not understand why they should particularly contend in favor of Civil Courts.

MR. NAGAPPA.—I desire for many reasons that the Civil Courts should decide these cases. In the course of the trial of these cases, complicated questions of law and fact will arise which require for their adjudication not only a thorough knowledge of the revenue law on the subject but a knowledge of general law as well; for instance, there may arise questions of limitation, adverse possession, adoption, inheritance, questions of Hindu Law, etc. The procedure that is prescribed for Revenue Courts is defective. According to Chapter XII of the Revenue Code, wherein the procedure to be adopted by Revenue Officers in the trial of suits is laid down, no provision is made for a party to demand as of right to have all the witnesses examined. There is not a single section among the sections relating to the formal enquiry which allows this right. (Cf. Sections 193, 196 and 201 of the Land Revenue Code, Regulation IV of 1888).

My point is this. The party has no right to demand the officer holding any enquiry to examine all the witnesses he produces. The witnesses may be in attendance, but it is not obligatory on the part of the Revenue Court to examine them. Neither is there any section providing for the arguments to be heard. Hence the procedure prescribed for Revenue Courts to follow is defective.

PRESIDENT.—In the first place, is there any prohibition under the existing law against pateli or shanbhogi inams forming a part of the subject of a suit in a Civil Court?

MR. SRINIVASIENGAR.—Unfortunately this apparently small but really most important matter was obscured by certain other matters at yesterday's discussion. Civil Courts try only those cases in which Government is not implicated. What we did yesterday was practically in supersession of this.

PRESIDENT.—Now, suppose a suit is brought as between the members of a hakdar's family on the ground of succession, adoption, partition or any of those civil rights, in regard to family property generally. There may be properties other than those which are connected with the village office. With regard to the bulk of the property, a party will have to seek relief in the Civil Court and for small bits in the Revenue Court.

MR. C. SRINIVASIENGAR.—Suppose a holder dies and his office becomes vacant. The land attached to the office becomes available and there is a dispute between A, B and C as to who should succeed. The succession involves not only the right to the office but also the right to the lands attached to the office together with other property left by the deceased. Here, a single suit cannot be entertained in respect of all the items. There must be a suit in the Revenue Court and also a suit in the Civil Court. For the office and land there must be a suit on the revenue side, and for other property a suit on the civil side. The same objection holds good there also.

MR. K. P. PUTTANNA CHETTY.—Government interests are concerned only in the one and not in the other.

MR. M. C. RANGIENGAR.—In the case of the office and emoluments, Government is directly interested. It is more an administrative matter, and so Government would have the case tried in the Revenue Court. But the other is purely a civil matter. The circle of litigants is limited, the nature of the contention is civil, and the property is nominally appertaining to the office.

MR. NAGAPPA.—What I submit is hitherto it is with the indulgence of the Executive Council that lawyers were allowed to conduct revenue suits. We have to obtain permission without which we cannot of right appear before the Councillors.

MR. PUTTANNA CHETTY.—Revenue Courts also require relief. They have quite enough work to do without being flooded with suits of this kind.

MR. V. N. NARASIMMIYENGAR.—I think it is rather the other way. There is the Deputy Commissioner of Mysore. I would like to know how many of such cases he has heard for the last six years. I should say not more than six or seven.

Such cases form only a minority. I very much support Mr. Srinivasiengar's proposal that such cases should rest entirely within the jurisdiction of Revenue Courts.

PRESIDENT.—When the dispute is as regards family property generally, the bulk of the property will form the subject matter of a suit before a Civil Court and for a small patch of land the parties will be compelled to go before a Revenue Court. This seems really hard. The right to the office is altogether a different matter. We may omit the amendment made in clause 15, if the members think that the innovation need not be made.

MR. NAGAPPA.—I would rather have the amendment. It is a highly desirable one and moreover it has been passed.

MR. SRINIVASIENGAR.—Only the lawyer members spoke against my suggestion. Perhaps the other members of the Council might agree with me.

PRESIDENT.—What do you say, Mr. Ananda Rao?

MR. ANANDA RAO.—I think the general public opinion is that there is a great conflict of orders in the Revenue Courts. No doubt, the Revenue Officers are equally qualified with the Civil Court Officers. But it is not the merely passing of examinations, nor even in possessing a knowledge of law. It is the practice, the way of drawing up issues, etc., that will help one in such cases. These are matters which an officer in the revenue line generally forgets.

MR. SRINIVASIENGAR.—But now the offices are interchangeable.

MR. NARASIMMIYENGAR.—It is the general opinion that when you go to a Court of law, you don't get justice but you get law.

Mr. PUTTANNA CHETTY.—I hold the same opinion as I did yesterday; I think the whole trend of our recent decisions is to make pateli and shanbhogi service inam lands more and more personal and I think it is one step in that direction to invest Civil Courts with jurisdiction over certain suits in which the subject matter is service inam land.

MR. RANGASWAMI IYENGAR.—Going into the question properly would take some time of the Council. In my remarks of yesterday, I said that in construing Section 221, clause (*a*) of the Land Revenue Code, as regards suits concerning inam lands, there were cases in which although Government might not have been made a party, there might be circumstances in which they would have to be impleaded. Where Government has an interest, although not expressly referred to by either party, in such cases the suits should not be taken before a Civil Court. But to-day from what has been discussed in the Council as regards the advisability of the enjoyment of *maniam* lands by sharers of the family of patel or shanbhog, it seems to be only proper to draw a distinction between transactions having reference to the property which implicate Government and transactions which do not implicate Government either expressly or by the circumstances of the case. For instance, I would refer to two or three concrete hypothetical suits which will make my point pretty clear to the Hon'ble members.

(1) Suppose one member sues for partition of shanbhogi inam land along with other property. The provisions now passed would permit the land being partitioned. The character of the land is not denied, whether it is with A or B, with the plaintiff or defendant. The interests of Government do not suffer. Then is it necessary that Government or the Revenue Department should have the right of dealing with such a suit? That is one point.

(2) A member of the family has borrowed money on the hypothecation of the inam land from another member who wants to sue for the recovery of his money. In a case of this kind also, the character of the land is not impugned, and the interests of Government do not suffer.

(3) A third party is given a lease of the shanbhogi lands. The family members do not cultivate the lands themselves; they often lease them to third parties. A third party who has taken such a lease is not interested in saying that the land is unalienated and there is no dispute about the identity of the land. In this case, is it to the interest of Government to require the restriction that such transactions should be excluded from the jurisdiction of the Civil Courts?

In all the above cases is there any provision to decree or have we been decreeing *mesne* profits, costs, etc., when the case is tried by a Revenue Court? If Revenue Courts were to decree these, there may arise great complications in executing the

decrees. Excepting in cases as I said, where the interest of Government in the property would be risked or would be in litigation, is there any object in restricting suits to Revenue Courts ? That is the way to consider the question.'

In connection with this question, I would refer to another suit which I alluded to yesterday. The facts of the case are these :—Some shanbhog or patel had sued for property including the inam land and had obtained a decree, and in course of execution he went and attached the crops grown on the inam land. The defendant objected and the Munsiff allowed the objection. But the Chief Court held that as the nature of the inam was not in dispute and as the party had already dealt with it as ordinary property in the Civil Court and as the crop had already been removed from the inam land, the attachment was not bad.

Again I am afraid that in more than one suit, inam lands had been included by oversight along with other property. But, as I said already, the interests of Government require only that cases in which there is any dispute about the character of the inam land or about its identity should form the subject matter of suits filed in Revenue Courts. Other suits relating to inam lands may be left to the jurisdiction of Civil Courts.

PRESIDENT.—But in regard to the third hypothetical case put forward by you as to leases, would not the suit be cognizable by a Civil Court even as to the land annexed to the office, when the dispute is not as to the nature of the tenure ?

MR. RANGASWAMI IYENGAR.—The lessee might refuse to give up the land.

PRESIDENT.—I think the explanation is very satisfactory so far. Our ideas have been made clear. Now we will proceed to the next amendment which Mr. Ananda Rao intends proposing in respect of clause 12.

CLAUSE 12.

MR. T. ANANDA RAO.—I beg to propose that the words "the file" be substituted for the word "that" in the 9th line of this clause. This is merely a verbal improvement and needs no explanation.

The amendment was agreed to by the Council.

OLD CLAUSE 12.

PRESIDENT.—The next amendment is that which Mr. Nagappa intends to propose in *re* old clause 12.

MR. B. NAGAPPA.—Sir, I beg to move that all the provisions of clause 12 of the original bill do remain intact and the following new clause be added :—

"The procedure applicable to the framing of plaints, memoranda of appeals and applications for execution of decrees or orders shall be the same for filing suits, appeals and applications under this Regulation as that prescribed in the Civil Procedure Code, subject to such rules as may be framed under Section 23."

The original clause of the draft Regulation contains a wise provision regarding the procedure to be followed. This is borrowed from the Madras Act of 1895. The Select Committee have recommended clause 13 in lieu of clause 12. There is an obvious defect in the new clause proposed. It provides that the same procedure as that prescribed for formal enquiries in the Land Revenue Code, Regulation IV of 1888, be followed in trying suits under this Regulation. Sections 201 and 202, Chapter XII of the Land Revenue Code, deal with formal enquiries. There is no provision in that chapter which enables a party to demand as of right that any person whose evidence he requires shall be examined as a witness. There is also no provision to hear arguments.

This is hardly a desirable state of things. In the interests of justice, it is necessary that a party should have full opportunity to adduce all available evidence in support of his case. I therefore propose this amendment.

In this connection I find that that there are several other amendments proposed to be moved by Mr. Ananda Rao. If the provisions applicable to the trial of Civil suits are made applicable also to revenue enquiries, then the defect would be remedied.

MR. C. SRINIVASIENGAR.—There is an amendment by Mr. Ananda Rao as regards clause 13. All that Mr. Nagappa now urges can go into that.

MR. B. NAGAPPA.—If all the rules made by the Madras Government under their Section 20 are embodied in the rules to be framed under Section 23, there will be no difficulty. These rules are well drawn up.

MR. M. C. RANGIENGAR.—Mr. Ananda Rao and myself have given notice of amendments to clause 13. The Madras Government have framed a body of rules with regard to the trial of revenue suits reproducing *verbatim* the provisions of the Civil Procedure Code. Under clause 23, which is Section 20 in the Madras Act, all those rules may be adopted.

MR. B. NAGAPPA.—I desire that the rules under clause 23 may be the same as those made by the Madras Government under Section 20 of the Madras Act of 1895. If this is done, there is no necessity for the amendment which I have proposed. They have retained the provisions of clause 12 and have made rules also.

MR. SRINIVASIENGAR.—The old clause 12 is not self-contained. There are a good many gaps there. All the necessary provisions are not embodied in it.

MR. B. NAGAPPA.—If it is noted that the rules that are to be made under clause 23 would provide for what is contained in old clause 12, there is no necessity for my amendment at all. The rules to be framed should embody all the provisions contained in the Civil Procedure Code in respect of the filing of suits, appeals and applications.

PRESIDENT.—Why should the provisions of the Civil Procedure Code be reproduced here? What is the corresponding provision in the Revenue Code?

MR. RANGASWAMI IYENGAR.—In the Revenue Code it is not said that the procedure followed in the Civil Procedure Code should be followed in any particular. I was just going to say that since this Regulation is one essentially on the revenue side and since the courts to deal with cases under this Regulation will be Revenue Courts, it is desirable that the procedure and the rules applicable to enquiries should be analogous to those contained in the Land Revenue Code. If so, we need only say that the procedure will be the same as that prescribed in the Land Revenue Code. It is better to amend that Code, if necessary, rather than introduce amendments here, which are purely of a minor character. I simply want uniformity in practice.

MR. M. C. RANGIENGAR.—If the procedure prescribed in the Land Revenue Code be defective, rules may be framed under clause 23.

MR. C. SRINIVASIENGAR.—The procedure laid down in the Civil Procedure Code is referred to in the Revenue Rules also.

PRESIDENT.—If Mr. Nagappa is agreeable to Mr. Ananda Rao's amendment, there is no necessity for his amendment.

MR. B. NAGAPPA.—If the amendment suggested by Mr. Ananda Rao in clause 13 be passed, I will not press my amendment.

The amendment was withdrawn by Mr. Nagappa subject to the amendment of clause 13 against Mr. Ananda Rao's name being passed.

CLAUSE 13.

MR. C. SRINIVASIENGAR.—Sir, I beg to propose that the present clause 13 be turned into sub-clause (2) and that a new sub-clause (1) be added as follows:—

"A formal or summary enquiry under this Regulation shall be deemed to be a 'judicial proceeding' within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, and the office of the officer holding a formal or summary enquiry shall be deemed to be a Civil Court for the purpose of such enquiry."

In the Revenue Code also there is a similar provision, and I have copied this from that Code.

MR. S. NARAYANA RAO.—By declaring the enquiry a judicial proceeding, it will be invested with greater dignity, and there is the probability of witnesses speaking the truth.

MR. B. NAGAPPA.—I may be permitted to suggest a small amendment. There is no distinction drawn in the bill between a formal and a summary enquiry. We may therefore say "all enquiries" instead of the first five words of the amendment.

MR. RANGASWAMI IYENGAR.—Instead of all these, it will be better to treat all enquiries under this Regulation as enquiries under the Land Revenue Code. The procedure therein laid down will apply to all cases mentioned in the present Regulation.

MR. C. SRINIVASIENGAR.—I am afraid that this won't suit.

MR. RANGASWAMI IYENGAR.—I think that the following may be substituted for clause 13:—

"All the provisions in the Land Revenue Code, shall apply in the case of all enquiries conducted under this Regulation."

The scope of clause 23 seems to be much misunderstood. It only provides for framing rules which the substantive provisions of the bill cannot provide for. The words "all the provisions of the Land Revenue Code" will include Section 204 which refers to the provisions of the Penal Code.

MR. B. NAGAPPA.—I think it would be better to have a different clause altogether.

MR. S. NARAYANA RAO.—A question may arise whether a particular proceeding is a judicial proceeding or not. It will be very difficult to determine it if the proposal of Mr. Rangaswami Iyengar be adopted.

PRESIDENT.—We have no formal or summary enquiries under this Regulation. So, we may say "all enquiries."

MR. C. SRINIVASIENGAR.—In the Land Revenue Code several kinds of enquiries are prescribed which we have not got in this Regulation. So I would object to Mr. Rangaswami Iyengar's amendment. I don't object to the change proposed by the President. The object is only to invest the officer with the dignity of a judicial officer.

MR. RANGIENGAR.—If it is declared that every enquiry shall be deemed to be a judicial proceeding, it would be enough.

MR. RANGASWAMI IYENGAR.—Unless we know very well the scope and object of the clause, I would follow the advice given by the First Councillor to adopt the wording of the old Regulation and not to venture on any alterations.

The amendment was passed by the Council with the substitution of "every enquiry" for "a formal or summary enquiry," the clause as passed reading as follows:—

"Every enquiry under this Regulation shall be deemed to be a 'judicial proceeding' within the meaning of sections 193, 219 and 228 of the Indian Penal Code."

MR. M. C. RANGIENGAR.—I withdraw the amendment which I have given notice of in favor of Mr. Ananda Rao's.

MR. T. ANANDA RAO.—Sir, clause 13 as it stands covers only suits filed. Provision has to be made for appeals and applications also. The intention is indeed to follow the provisions of the Land Revenue Code as far as possible in these matters. But it is desirable to relegate instructions to the rules proposed to be issued under clause 23. Indeed, clause 23 as it stands includes this in the several heads for rules therein provided for, and it is unnecessary to make a separate and special mention such as is contained in the present clause 13. I propose that it be modified so as to read as follows:—

"The procedure to be followed with regard to suits, appeals and applications under this Regulation shall be regulated by rules made by Government under section 23."

MR. M. C. RANGIENGAR.—I beg to second the proposition.

This was put to the Council and carried.

CLAUSE 14.

MR. T. ANANDA RAO.—Clause 14 as it stands provides for costs being awarded in respect of decrees and orders passed in suits. It is desirable that this should be extended to enquiries also. With this view, I propose that the words "and enquiries" be inserted after the word "suits." in the 2nd line of this clause.

MR. S. NARAYANA RAO.—I beg to second this proposition.

The amendment was passed by the Council.

CLAUSE 16, SUB-CLAUSE (1).

MR. C. SRINIVASIENGAR.—Sir, I beg to propose that the words "and from every order passed by the holder of a commission exercising any of the powers of an

Assistant Commissioner under sub-section (3) of Section (7)" be inserted after the words "Assistant Commissioner."

Last time I put in a general sub-section dealing with the procedure with regard to appeals in such cases. Mr. Rangiengar said that we should first provide for appeals being filed and then for procedure. I have thought over it and proposed the present amendment.

MR. RANGIENGAR.—I second it and in doing so, I beg to bring to the notice of the Council that a further amendment would be needed. I am sorry I did not give notice of it. Even an Amildar can fine a village servant. Have we provided for an appeal against his order?

MR. C. SRINIVASIENGAR.—This is provided for in another place.

The addition proposed by Mr. Srinivasiengar was approved by the Council.

CLAUSE 16. PROVISO TO SUB-CLAUSE (1).

MR. M. C. RANGIENGAR.—Sir, the existing rules provide for an appeal to Government against the decision of the Revenue Commissioner in appeal on a question of law. I propose that this right of appeal to Government be continued and that the proviso be amended accordingly by the addition of the following:—

"And provided further that nothing contained in this Regulation shall affect the right of appeal to Government secured under the rules relating to the Revenue Commissioner and the Executive Council."

I beg to submit that I could not give the exact description of the proceedings which provide for an appeal against the order of the Revenue Commissioner to Government. I simply said "relating to the Revenue Commissioner and the Executive Council."

MR. RANGASWAMI IYENGAR.—We have got it in Section 210 of the Land Revenue Code as amended by Regulation IV of 1906.

MR. RANGIENGAR.—I propose that the same be continued.

MR. B. NAGAPPA.—I second the proposition.

PRESIDENT.—What is the object of it?

MR. SRINIVASIENGAR.—Formerly appeals from the decisions of Deputy Commissioners used to lie to Government. In 1906, the Revenue Commissioner was constituted the Chief Controlling Revenue authority. In case the Deputy Commissioner dealt with a suit in the first instance, an appeal would lie to the Revenue Commissioner and the Revenue Commissioner's decision would ordinarily be final. But when a question of law is involved, an appeal would lie to Government. The Revenue Commissioner is now exercising the power which used to be exercised by Government formerly.

MR. RANGASWAMI IYENGAR.—The power of revision vested in Government will meet all requirements.

MR. RANGIENGAR.—Under Section 210 of the Land Revenue Code, there is no limit to the number of appeals. Sub-section (2) provides for an appeal to Government against a decision by the Revenue Commissioner while exercising his appellate authority. What is said in that section is that against the decision of one revenue officer an appeal lies to his immediate superior officer. The section contemplates a number of appeals. An appeal lies not only from the decision of the officer who exercises original jurisdiction, but an appeal lies under this section against the decision passed in appeal to that officer's immediate superior officer. That contemplates two appeals.

MR. C. SRINIVASIENGAR.—No. The section allows only one appeal. There is an exception made. If the Revenue Commissioner is the first Revenue appellate authority there can be no appeal against his decision, except on a point of law. I am afraid the amendment made in 1906 is not clearly worded.

PRESIDENT.—I think we might limit the number of appeals.

MR. SRINIVASIENGAR.—In criminal cases only one appeal is allowed, while in Civil Cases a second appeal is allowed. On the same analogy not more than two appeals may be allowed in revenue matters. But there may be revision on the second appeal.

MR. RANGIENGAR.—If it is made compulsory that Government should hear appeals, then the party will be entitled to be heard. It should not be optional to hear parties by reserving only the power of revision. There is a good deal of difference between the exercise of the powers of revision and of appeal.

MR. NAGAPPA.—It is necessary that that there should be an appeal on questions of law. Section 210 A of the Land Revenue Code provides for it and there is no reason why we should curtail that right. There is not much use in merely reserving to Government the power of revision which may or may not be exercised. As Mr. Rangiengar said, there is a great deal of difference between revision and appeal. When an appeal is preferred the party has a right to be heard.

PRESIDENT.—Will Mr. Rangiengar suggest any improvement in the wording of the amendment proposed?

MR. RANGIENGAR.—Yes. The words "Section 210 of the Land Revenue Code Regulation IV of 1888," may be substituted for the words, "the rules relating to the Revenue Commissioner and the Executive Council."

MR. SRINIVASIENGAR.—As I said already, there are only two appeals, one to the regular appellate authority and another to the Chief Court and no third appeal is allowed on the civil side. On the revenue side, sub-section (2) of Section 210 of the Land Revenue Code was put in with the object that, if the Revenue Commissioner dealt with a case as the first appellate authority on questions of fact, his decision would be final; while on questions of law a further appeal would lie to Government. That being so, and since there seems no necessity whatever for more than two appeals, I am opposed to the proposed amendment. Whenever necessary, Government can call for records and correct erroneous decisions passed by subordinate revenue officers. This power of revision will, it seems to me, amply meet all requirements.

MR. RANGASWAMI IYENGAR.—I am practically of the same opinion as Mr. Srinivasiengar. I don't see the reason for holding out opportunities for preferring too many appeals. But, at the same time, in order that there may be a uniformity of procedure, the appeal clauses may be either adopted from the Land Revenue Code or those in the Land Revenue Code may be indicated in some other way, as for instance, that appeals under this Regulation shall be regulated in the same way as appeals under the Land Revenue Code.

MR. C. SRINIVASIENGAR.—The amendment is more definitely put and is clearer.

MR. RANGASWAMI IYENGAR.—Then we must introduce another section for revision.

MR. ANANDA RAO.—It is very difficult to exclude personal questions in such matters. If a right of appeal is to be provided for, as proposed by Mr. Rangiengar, that of course will increase our work. But nevertheless it would be better to adopt the amendment in the interests of justice. One good effect of this will be that justice will be better done apart from other considerations. I am therefore in favor of Mr. Rangiengar's amendment.

PRESIDENT.—Then Mr. Rangiengar's amendment may be passed as follows:—

"and provided further that nothing contained in this Regulation shall affect the right of appeal to Government under Section 210, sub-section (2), of the Mysore Land Revenue Code."

This was adopted by the Council, the votes being 7 *for*, 3 *against* and 2 not voting.

MR. C. SRINIVASIENGAR—Sir, I beg to propose that the existing proviso to sub-clause (1) be revised as follows:—

"Provided that in cases of dismissal or removal under section 7 and in suits under section 11, a second appeal from the decision on appeal of the Deputy Commissioner shall lie to the Revenue Commissioner whose decision on such appeal shall be final."

My proposal is that all village officials should be allowed the privilege of further appealing to the Revenue Commissioner. The decision of the Deputy Commissioner dealing with the case should not be conclusive, but there should be a further appeal to the Revenue Commissioner whose decision should, in all cases, be final irrespective of the official concerned. The proviso as it stands differentiates between one class

of village officials and another. My proposal is that all should have the privilege. Not that I propose to confer any new privilege. The privilege already exists, and rather than restrict it in future to a certain set of officials, I propose to extend it to the other set as well.

MR. SYED AMIR HASSAN.—I beg to second the proposal.

MR. B. NAGAPPA.—The amendment may be adopted.

The amendment was passed without opposition.

CLAUSE 16, EXPLANATION TO SUB-CLAUSE (1).

MR. C. SRINIVASIENGAR.—Sir, I beg to propose that the explanation to this sub-clause be omitted. I do not quite understand the object of this explanation. Clause 9 deals with the appointment of village officers in alienated villages. There is also clause 7 which deals with officials in alienated villages. The one is about appointment and the other about punishment; and under clause 16 "from every order passed under this Regulation . . . an appeal shall lie to the Revenue Commissioner . . . ." I do not understand why clause 9 has been singled out. An order under clause 9 is one made under this bill and as such like all other orders it is subject to appeal.

MR. RANGIENGAR.—This was added by the Select Committee. During the discussion that took place a question arose as to whether an order passed by an Assistant Commissioner or a Deputy Commissioner confirming the appointment made by the holder of an alienated village would be called strictly speaking an order. In order to place the matter beyond all doubt, this explanation was inserted. Even in the Civil Procedure Code there is a distinction made between an independent order passed and a confirming order. Where a District Judge confirms an order of the Munsiff, no appeal is allowed against the District Judge's order. But an appeal is allowed against the original order. Similarly a distinction is here made between an original order and an order which confirms that order.

MR. SRINIVASIENGAR.—Please refer to clause 7. Are they not orders in which an appeal lies? The words used there are, declaration and confirmation. The explanation is liable to lead to considerable misapprehension and naturally anybody who construes it might wish to know why this has been put in and why a similar provision does not find a place in the bill in regard to other orders.

MR. RANGIENGAR.—Because other orders are passed by Government officers.

MR. RANGASWAMI IYENGAR.—I think it was passed by the Select Committee under this impression. Although the order is confirmed by the Assistant or Deputy Commissioner, the appointment is made by the proprietor. Probably the idea was to bring the order confirming also under appeal.

MR. SRINIVASIENGAR.—If the inamdar does not make the appointment, the Deputy Commissioner himself makes it and that itself is an order.

MR. RANGASWAMI IYENGAR.—Yes. That is making the matter clearer. Under clause 9, it may be argued that it is only when the appointment is made by the Assistant or Deputy Commissioner on the failure of the proprietor to make an appointment, that an appeal might lie. But the explanation will clear up matters.

MR. SRINIVASIENGAR.—I am not very particular about my amendment being passed. But the object of the explanation is not very clear to me.

MR. RANGIENGAR.—Clause 7 deals with orders subject to confirmation *i.e.*, orders passed by Government officers themselves. Therefore this clause can have no sort of bearing upon the construction of clause 9.

MR. SRINIVASIENGAR.—Clause 9 not only deals with confirmation but with appointment as well. And this explanation refers only to a part of that clause.

MR. RANGIENGAR.—It was understood in the Select Committee that it is an order confirming the original order.

MR. NARASIMMIYENGAR.—I second Mr. Srinivasiengar's amendment.

MR. ANANDA RAO.—Whenever there is an appeal, is it an appeal against the original or confirming order?

MR. SRINIVASIENGAR.—An order confirming is the order which is appealable.

MR. ANANDA RAO.—Suppose the inamdar has made an appointment. To whom will an appeal against it lie?

MR. SRINIVASIENGAR.—To the Deputy Commissioner.

MR. RANGIENGAR.—There can be no appeal against a confirming order. It is the original order that is generally appealed against. For instance, a Munsiff makes an order for the appointment of a Receiver and sends the record to the District Judge for confirmation. The District Judge confirms the order. An appeal will lie not against the confirming order, but against the original order of the Munsiff.

MR. ANANDA RAO.—Then the order of confirmation is made as a matter of routine.

MR. RANGIENGAR.—There is no appeal provided against the order made by the proprietor.

MR. RANGASWAMI IYENGAR.—Yes. Then it is an omission. The provision as drafted means that the order confirming is the same as the original order. The object was to treat the confirming order as if it were an order passed originally. And then the Deputy Commissioner has also to confirm the original order sometimes.

PRESIDENT.—Is there no appeal after confirmation by the Deputy Commissioner?

MR. SRINIVASIENGAR.—Yes. There is.

PRESIDENT.—What is the sense of the Council about the amendment proposed?

MR. NAGAPPA.—There is no harm done in retaining the explanation. We are all agreed about the principle. The explanation only makes the meaning clear. The order referred to is appealable, and an appeal will lie to the Revenue Commissioner.

PRESIDENT.—Is the explanation necessary then?

MR. NAGAPPA.—I think it is. But it requires to be improved upon a little I shall prepare a draft of an amendment and submit it to the Council to-morrow.

The Council adjourned to the next day (25th March 1908).

WEDNESDAY, 25TH MARCH 1908.

The Council met at 3 P.M.

PRESENT.—All except Mr. Kantharaj Urs.

MR. B. NAGAPPA.—Sir, in connection with the explanation to clause 16, I proposed yesterday that I would redraft it. On reconsideration I think the explanation is not necessary. Clause 16 itself contains the necessary provision and is plain enough. The sense of the Council seems to be that there should be an appeal from the order confirming the appointment. Such being the case, I do not think the explanation is necessary. I beg to second the proposal of Mr. Srinivasiengar to omit the same.

PRESIDENT.—If the Council agrees, we shall omit it.

The Council agreed to omit the explanation to clause 16.

CLAUSE 16, SUB-CLAUSE (2).

MR. C. SRINIVASIENGAR.—Sir, I beg to move that the words "and from every order passed by the holder of a Commission exercising any of the powers of an Amildar or a Deputy Amildar under sub-section (3) of Section 7" be substituted for the words "and from every order passed by a holder under sub-section (3) of Section 7." This also arises from the amendment that was made at the last sitting of the Council providing for the holders of alienated villages being authorized by commission to punish their village officers. Some holders may be entrusted with higher powers than others. In the case of those exercising higher powers, we have made provision for appeal in sub-clause (1) of this clause. The present amendment is to provide for appeals from the orders of holders of commission who exercise Amildars' powers. As I said, I had proposed that the provisions regarding appeals should apply *mutatis mutandis* to such appeals. But on a further consideration of the objection taken at

the last sitting, I am of opinion that we have to provide for appeal before laying down the procedure. I therefore propose that the amendment may be adopted. It is only the formal insertion of a few words.

MR. SYED AMIR HASSAN.—I beg to second the amendment.

MR. M. C. RANGIENGAR.—Yesterday while considering sub-clause (1) of clause 16, the amendment proposed by Mr. C. Srinivasiengar to insert the words "and from every order passed by every holder of a commission exercising any of the powers of an Assistant Commissioner under sub-section (3) of Section 7" after the words "Assistant Commissioner" in that sub-clause, was adopted. Would it not be better to insert the words "exercising the powers of an Assistant Commissioner, Amildar or Deputy Amildar" for the words "Assistant Commissioner" in that amendment?

MR. C. SRINIVASIENGAR.—The appeal in the one case lies to the Deputy Commissioner, while in the other to the Deputy Commissioner or the Assistant Commissioner.

MR. A. RANGASWAMI IYENGAR.—I have got one doubt about this amendment. I have just now been able to lay my hand on the original provision for investing the holders of inam villages with the powers of an Assistant Commissioner or an Amildar or a Deputy Amildar. If these holders of inam villages can also fine as holders, then there would be no necessity for this amendment. There was some reason for putting it in sub-clause (1), because there was no reference there to holders holding any powers at all. As it was not intended originally that they should exercise the powers of an Assistant Commissioner, they were not referred to there. But the present sub-clause (2) has the words "from every order passed by a holder under sub-clause (3)." They would include one who is invested under a Commission with the powers of an Amildar or a Deputy Amildar. Cannot the holder of a village exercise any power under this Regulation without being so empowered?

MR. C. SRINIVASIENGAR.—He can do so only under a Commission.

MR. V. N. NARASIMMIYENGAR.—A holder cannot even fine a toti without a Commission.

PRESIDENT.—What is the sense of the Council as regards this amendment?

The Council agreed to adopt it.

MR. T. ANANDA RAO.—I beg to propose that thewords "decision or" be inserted after the word "every" in the last line and the words "or Section 11 A" after the words "Section 7" in the 4th line.

These amendments are consequential on the adoption of the new clause, *viz.*, 11 A and provide for appeals from decisions passed on complaints made under that clause.

MR. C. SRINIVASIENGAR.—I second it.

PRESIDENT.—I believe the Council is agreeable to it.

This was agreed to by the Council.

CLAUSE 17.

PRESIDENT.—We come next to the amendment to clause 17, which Mr. B. Nagappa intends moving.

MR. B. NAGAPPA.—Sir, I find an amendment by Mr. Ananda Rao to the effect that this clause be omitted. I shall await the decision of the Council on that amendment.

MR. T. ANANDA RAO. —I beg to propose that the whole clause be omitted. It provides against the contingency of a case coming up in appeal before an officer who had himself dealt with it in its original stage. A provision of this kind is hardly necessary in a statute such as we are considering, as it may well be presumed that the officer concerned will not deal with the appeal but will seek the instructions of his official superior.

MR. M. C. RANGIENGAR.—If there is a provision in the bill for the transfer of cases, then there will be no necessity for such a clause; but if there is no provision for transfer, then provision will have to be made for the same. Now there is a provision in clause 12 for the transfer of suits from one Assistant Commissioner to

another. It may so happen that the Assistant Commissioner may himself become the Deputy Commissioner. As the higher authority can always be moved to transfer the appeal, as the First Councillor pointed out, there can be no possible objection to such a transfer. The High Courts are given power to transfer cases from the file of one District Judge to that of another.

MR. C. SRINIVASIENGAR.—Suppose the Revenue Commissioner happens to have been the Deputy Commissioner who passed an order; is there power expressly given to Government to hear an appeal from the Deputy Commissioner's order? Why say all this here?

PRESIDENT.—It does not appear to be necessary that such a small enactment as this should make provision for contingencies that are not likely to arise.

MR. NAGAPPA.—In that case, clause 12 may be amended slightly. In very many cases we find that the same officer who made the original order is promoted and the appeal comes before him alone for decision as the appellate authority. It is not right that such an officer should hear the appeal in such cases.

PRESIDENT.—Have you a large number of appeals of that kind? If such a thing happens, there is remedy on the revision side.

MR. B. NAGAPPA.—It is doubtful whether there is revision on questions of fact.

PRESIDENT.—Mr. Ananda Rao proposes to move an amendment to allow revision on questions of fact also. If an officer has been so wanting in discretion as to try in appeal a case which has been disposed of by himself, there cannot be a better case for Government stepping in and taking the necessary action. This is a small matter.

MR. M. C. RANGIENGAR.—But, supposing such a case happens, what is the man to do? Is he to submit the records?

PRESIDENT.—What do you do in such a case, Mr. Rangaswami Iyengar?

MR. A. RANGASWAMI IYENGAR.—If the Deputy Commissioner says that the party did not come up to him in appeal but that he has no objection to the case being disposed of by the Revenue Commissioner, it is disposed of by him. The procedure is not quite regular. The Land Revenue Code only provides that an appeal lies to the Officer's immediate superior authority.

PRESIDENT.—Can we not make the necessary provision in clause 12?

MR. K. P. PUTTANNA CHETTY.—Government have no power to hear appeals under this Regulation except on a point of law.

MR. C. SRINIVASIENGAR.—If the Revenue Commissioner can call for the record of any enquiry or any proceeding held by such officer, is not the provision sufficiently comprehensive?

MR. M. C. RANGIENGAR.—It will be sufficiently comprehensive if pending cases are also included. Otherwise, it will apply only to such cases as have been decided.

MR. C. SRINIVASIENGAR.—If you retain the clause, you have also to provide for the Revenue Commissioner sending up cases to Government.

MR. B. NAGAPPA.—There is no harm in retaining the clause.

MR. T. ANANDA RAO.—Then, I beg to withdraw my amendment.

Mr. Ananda Rao was allowed to withdraw his amendment.

MR. B. NAGAPPA.—Sir, I beg to move that the following proviso be added after the word "final" in clause 17:—

"and provided that in respect of the offices of patel and shanbhog a second appeal shall lie to the Revenue Commissioner against the decision on appeal of the Deputy Commissioner."

Suppose the Deputy Commissioner passes an order in this case. As the wording stands, the order passed on appeal will be final. There will be no second appeal to the Revenue Commissioner as is provided for in clause 16. I believe it is necessary to insert the words proposed. It secures to the appellant the right given under the other section.

MR. C. SRINIVASIENGAR.—We cannot very well stop with the Revenue Commissioner. We may leave the Revenue Commissioner altogether. We may say

"higher authority." It will include the Revenue Commissioner making a reference to Government.

MR. S. NARAYANA RAO.—That will be a better provision.

After further discussion, it was resolved to amend the clause as follows:—

"17. If the officer to whom an appeal is presented under this Regulation happens to be the officer who in another capacity passed the decision which is appealed against he shall report the fact to the authority to whom an appeal from his decision would lie, and such authority shall dispose of the appeal in accordance with law."

CLAUSES 18 and 19.

MR. T. ANANDA RAO.—Clauses 18 and 19 are what may be called the reference and Revision clauses of the bill under consideration. The amendments I propose are calculated to bring these provisions in line with what exist on the same subject in the Land Revenue Code, for example, *vide* Sections 217 and 226. People are familiar with these latter, and it is desirable to adopt them in preference to others specially devised. Two important alterations are introduced in the proposed clause. One is that provision is made for doubtful questions of law or usage being referrable to the Chief Court which in this matter is a far more satisfactory tribunal than the Revenue Commissioner. The other is that provision is made for revision of the orders passed by the holder of a Commission in an alienated village under sub-clause (3) of clause 7 as adopted by this Council the other day. I propose that clauses 18 and 19 be omitted and the following substituted in their place:—

"The Government and any Revenue officer not inferior in rank to an Assistant Commissioner may call for and examine the record of any inquiry or the proceedings of any Revenue officer subordinate to it or him and may pass such order thereon as shall seem fit; and the Government may also refer questions for the decision of the Chief Court. The provisions of the Land Revenue Code, IV of 1888, as regards revision of proceedings and reference to the Chief Court shall apply to revision of proceedings and reference to the Chief Court under this section."

"*Explanation.*—For purposes of revision of orders passed by the holder of a commission under sub-section (3) of section 7, such holder shall be deemed to be an Assistant Commissioner or an Amildar according as he is invested with the powers of an Assistant Commissioner or an Amildar respectively under the above mentioned sub-section."

MR. B. NAGAPPA.—I beg to second the above amendment. and in doing so to bring to the notice of the Council that the original clause 19 was not quite clear as to whether the Revenue Commissioner had power to interfere on questions of fact, because it was drafted on the lines of Section 622 of the Civil Procedure Code. As the present amendment is wide enough to cover cases where Government or the officer concerned can go into questions of fact, I beg to second it.

PRESIDENT.—What is the sense of the Council with regard to the amendment seconded by Mr. Nagappa?

MR. C. SRINIVASIENGAR.—I think that clause 18 as drafted is somewhat defective in certain respects. But the amendment now proposed covers the same ground and also clause 19. I think it may be adopted.

The Council agreed to adopt the amendment.

PRESIDENT.—Then, as a consequence of this amendment having been passed, the amendments put down against Messrs. Rangiengar and Srinivasiengar may perhaps be considered as withdrawn.

Messrs. Srinivasiengar and Rangiengar with drew the amendments of which notice had been given by them in respect of clauses 18 and 19.

CLAUSE 20.

MR. T. ANANDA RAO.—Sir, clause 20 provides for review of judgment. No special and separate provision to this effect seems to be necessary here. Clause 13 as amended to-day meets the requirements by bringing all matters of procedure under this bill in line with the prescriptions of the Land Revenue Code. Therefore I propose that clause 20 be omitted.

MR. C. SRINIVASIENGAR.—How does clause 13 affect this ? It relates to procedure. If there is an application for review, how it should be dealt with will be a matter of procedure and would come under clause 13.

PRESIDENT.—The proposal to omit clause 20 is not based on the amendments effected in clause 13. Mr. Ananda Rao says that no such provision exists in the Land Revenue Code.

MR. B. NAGAPPA.—Although there is no provision, yet reviews are often entertained. Now we only legalise it.

PRESIDENT.—A general declaration that as far as may be the procedure laid down in the Revenue Code shall be followed, ought to suffice. These minute details are unnecessary. There must be some sort of proportion in a Regulation of this kind. It is a small provision and it does not find a place even in so elaborate a Code as the Land Revenue Code. The question is whether so much prominence should be given to it and provision made for it in the bill. It will only serve to increase the number of sections. As there is no provision in the Revenue Code for reviews, and it is only a matter of practice, why should not the same practice be set up under this bill? Government has no particular object in omitting it. I only throw out a suggestion.

MR. B. NAGAPPA.—Experienced Revenue Officers entertain and dispose of review applications, but all officers will not do so.

MR. C. SRINIVASIENGAR.—Where is the need for an express provision like this? No such need has been felt for years. I can understand a section like this finding a place in the Civil Procedure Code with 500 and odd sections.

MR. B. NAGAPPA.—It is not the smallness of the Regulation that is prominent but the importance of the question of offices dealt with.

MR. T. ANANDA RAO.—My personal impression is that the present procedure is justified under Rule 102 of the Land Revenue Rules. But some are of opinion that it is not.

MR. K. P. PUTTANNA CHETTY.—I beg to second Mr. Ananda Rao's proposal.

Mr. Nagappa having withdrawn the amendments in respect of clause 20 standing against his name, Mr. Ananda Rao's amendment to omit that clause was put to the Council and was agreed to.

CLAUSE 21.

MR. C. SRINIVASIENGAR.—Sir, I beg to move that the words "a suit for registering a minor as a successor to a village office may be brought at any time during the minority of the claimant and provided further that" occurring in this proviso be omitted.

Will those of my friends who sat on the Select Committee kindly enlighten me on the significance of this provision? As the minor can sue at any time during his minority, I do not know what the object was with which the provision was inserted in this proviso. Under clause 11 which provides for the institution of suits, there is this expression, "or being a minor, may sue to be registered as successor." Being a minor he can sue so long as his minority endures. Why the words I have mentioned should exist in clause 21 I cannot understand.

MR. B. NAGAPPA.—I beg to second the amendment.

The Council agreed to omit the words proposed.

CLAUSE 22.

MR. T. ANANDA RAO.—The proposal as regards clause 22 is merely verbal. It is to substitute for the Latin phrase "*mutatis mutandis*" its English equivalent 'as far as may be.'

On further consideration, it seems to me that the words may be omitted altogether.

MR. B. NAGAPPA.—I beg to second the motion to omit those words.

MR. C. SRINIVASIENGAR.—As several things are mentioned in Section 12 of the Limitation Act and only some of them will apply here, I think the words may be retained.

The Council agreed to substitute "so far as may be" for "*mutatis mutandis.*"

CLAUSE 23.

MR. M. C. RANGIENGAR.—I propose that the words "filing and in" be inserted before "disposing" in sub-clause (1) (v) of this clause.

MR. B. NAGAPPA.—I beg to second this.

The Council agreed to the above and also to the transfer of the word "applications" after "appeals" in this sub-clause.

MR. M. C. RANGIENGAR.—Sir, I beg to move that the following be added to this clause:—

"The Government shall, before making rules under this section, publish in the official Gazette, a draft of the same together with a notice calling on the persons interested and the public to state in writing their objections, if any, to the draft rules within a period of not less than three months from the date of the publication of such draft and notice. On the expiry of the period aforesaid, the Government shall consider such objections and pass such rules as may appear to it proper."

This is merely a reproduction of what is found in the Acts in British India. Generally the rules are published in the official Gazette, and some time is fixed within which representations are made, and Government consider them before the rules are finally adopted. I therefore beg to propose this addition to clause 23.

MR. B. NAGAPPA.—I second this amendment. It is necessary to give publicity to the rules and invite the opinion of the general public interested in them.

PRESIDENT.—The question is whether Government is to tie itself down and to be under this restraint of having to publish the rules before passing them. Government will, of course, take care to see that the rules are not inconsistent with the Act, and their action will be subjected to criticism. The rules cannot be kept secret. They can also be amended afterwards and summarily too without referring to the Council. I do not think there is any necessity for a provision of this kind being inserted here.

MR. NAGAPPA.—The Rules may be published for general information.

PRESIDENT.—Then why should we not make the Rules also subject to legislation i.e. make them part of the Regulation itself? I think that this is a matter which Government may well be trusted with.

MR. RANGIENGAR.—As the sense of the Council seems to be against the introduction of the clause, I won't press for a division.

Mr. Rangiengar withdrew the proposal.

The necessity of amending or adding to the provisions regarding Rules to be framed under this clause in consequence of the amendments in the other clauses of the Regulation was then discussed and it was agreed by the Council to add the following words in sub-clause (1), para (i) of this clause:— "and the selection of persons to fill offices newly created under Section 6."

SCHEDULE.

MR. B. NAGAPPA.—Sir, I beg to move that the following alterations be made in the Schedule:—

"In (1), substitute "6 years" for "3 years;"
In (2), substitute "60 days" for "30 days;" and
In (4), substitute "3 years" for "1 year."

Hitherto the time allowed is 12 years. Now we have cut it down to 3 years. It may cause hardship to parties. In civil cases, a suit based upon a registered document gives six years' time.

PRESIDENT.—Is this amendment seconded?

MR. C. SRINIVASIENGAR.—I doubt whether the three years' limit applies to disputes in Civil Courts under the amendment passed the other day by Government. Anyhow, the amendment of which notice is given by me, *viz.*, the addition at the end of item (1) of the words "except land wrongfully taken possession of or wrongfully withheld" was only a consequential amendment and I beg to withdraw it.

MR. B. NAGAPPA.—I beg to withdraw my amendment also.

MR. M. C. RANGIENGAR.—I think it follows as a direct consequence of the omission of the clause as to reviews, that the provision made in the Schedule as to limitation in such cases should also be omitted.

PRESIDENT.—The article may be allowed to remain as it is contemplated to allow review petitions being filed. There will be the advantage of knowing indirectly that review petitions are allowed as a period of limitation is provided for them here.

The retention of the article was approved, and Mr. Srinivasiengar's amendment to insert the letter "B" after the heading "Schedule" was agreed to.

SCHEDULE : COLUMN 1, No. 2.

MR. T. ANANDA RAO.—Sir, we have adopted the new clause 11A providing for decisions by Amildars and Deputy Amildars of complaint of non-payment of miras to totis, talaris and niragantis. The reasons which have induced us to adopt a short time limit for lodging such complaints are also reasons why a short time limit should be prescribed for appeals against such decisions. Ten days are considered sufficient. The necessary provision is proposed to be made by two amendments as follows:—

1. In column (1) of item No. 2 of the Schedule, after the words "Assistant Commissioner" insert the following words, *viz.*, "except an appeal from the decision of an Amildar or a Deputy Amildar under Section 11A."

2. After the said item No. 2, insert the following words, *viz*:—

In column (1) "Appeal to the Deputy Commissioner or Assistant Commissioner from a decision passed by an Amildar or a Deputy Amildar under Section 11A."

In Column (2) "Ten days."

In Column (3) "The date of the decision."

Of course, the number 11A will be altered when the several clauses of the bill are re-numbered.

MR. B. NAGAPPA.—The time proposed, *viz.*, "ten days" is too short.

MR. RANGASWAMI IYENGAR.—I think article 2 is sufficient to cover the whole.

MR. T. ANANDA RAO.—Then I beg to withdraw the amendment.

The amendment was withdrawn.

CLAUSE 1, SUB-CLAUSES (2) AND (3).

Mr. C. Srinivasiengar having suggested that the words "in like manner" may be inserted after "may" in the last but one line of sub-clause (2) of clause 1, and the words "in the official Gazette" after "Government" in the last line of sub-clause (3), the Council resolved to adopt the same.

MR. T. ANANDA RAO.—Sir, the amendments proposed by the Select Committee and also other amendments proposed here before the Council having been disposed of, it now devolves on me to move under Rule 50 of the Rules of business that the bill as amended be taken up and passed at a subsequent meeting. In doing so, I feel it my duty to point out to the Council, that in adopting yesterday the third of the three alternative redrafts which Mr. Srinivasiengar proposed in respect of clause 5 of the bill, the Council have acted somewhat *ultra vires*. I advance this opinion with considerable diffidence because I know I am in a small minority in this matter. But I feel it my duty to point it out all the same.

The amendment as adopted assumes that the service inam lands of the offices of patel and shanbhog are enfranchised to a degree so that they could under existing rules not only be inherited but also be partitioned or transferred among the members of a hakdar's family. I doubt that the existing rules allow of this. The Potgi settlement might condone such cases which may have occurred in the remote past. But it is a totally different thing to permit such in the present and in the future. Injunctions in regard to the emoluments of office are as old as the order of 1835 which have, as occasion offered, been repeated and acted upon. The normal status of a shanbhog's or a patel's family is that of an undivided family, and one result of the restrictions imposed on the tenure of the service lands has been that they have for the most part been dealt with *en bloc* in family arrangements as if they had been constituted into what in the Malnad used to be called a *warg*. The Survey

Department divided the holding into survey numbers and thus introduced a facility for relinquishment of portions of the inam holding. To introduce now a facility for partition would be to introduce a further disintegrating influence; for, under the rules relating to minimum areas, the service inam lands would be parcelled out into small patches so low down as four acres in the case of dry crop land, one acre in the case of wet crop land, and half an acre in the case of garden land. We shall thus be losing the advantage of having large landholders among the hakdar families. When this advantage is lost, enfranchisement of the service inam lands would become inevitable and necessary. I do not mean to say that enfranchisement is undesirable. That is a question upon which I wish to have an open mind. That certainly is a measure which cannot be adopted without a full investigation and full information of local conditions and requirements. If any Hon'ble Member considers it to be a most desirable measure, let him bring it forward as such, clearly and explicitly. We shall then know where we are and what we are about. But what I feel it my duty to object to is the introduction of an element by a side-wind which must force our hands further to a measure of enfranchisement. As to this measure of enfranchisement, the fact is as I have told you that high authorities have flinched from it whenever it was proposed to them. If I am told that by the imposition of the full survey assessment on a service inam land, it has practically been enfranchised, my answer is that the imposition of full survey assessment is one of the incidents of enfranchisement but does not denote or amount to enfranchisement. The Dewan President has been kind enough, as announced the other day, to order some papers to be printed and issued as selections from the records of the Mysore Government. When you examine this and other sources of information, you will find that enfranchisement has never been contemplated in the settlement of these service inam lands effected under the Potgi Rules. If the settlement has been effected, and yet the authorities have shrunk from calling it enfranchisement, it is easy to denounce the position as illogical or anomalous, but it is better to endeavour to reconcile the apparent conflict of ideas and to find out what construction is right and good. There is a sentiment which attaches to these service inam lands adverse to enfranchisement, because cases have existed in which the land-holder would sooner continue to pay a jodi which is higher than the survey assessment than relinquish the tenure and convert it into ordinary raiyatwari by paying the survey assessment. This sentiment deserves to be respected and fostered. In short, inasmuch as a measure of enfranchisement is not before the Council we are not in order in conferring any of the incidents of enfranchisement on service land as has been done by adopting yesterday the third of the alternatives proposed by Mr. C. Srinivasiengar. The second of his alternatives, by being in conformity with the existing Potgi Rule 34, is more appropriate and worthy of adoption by this Council. Or better still, the Potgi Rule 34 itself could be adopted *verbatim* as that is the existing rule.

With these remarks, I move that the bill as amended be taken up at a subsequent meeting of the Council.

MR. SRINIVASIENGAR.—As the section was passed yesterday, it rests with Government by rules to say what lands are assigned as emoluments to the holders of any particular office and what not. In the case of lands not so assigned, alienations will be permitted by law as passed yesterday. It is for Government either to assign or not to assign lands as emoluments to the holders. I am unable to see anything *ultra vires* in this.

MR. ANANDA RAO.—That is a truism and in a way begging the question. You might as well say that all lands paying kandayam may be partitioned and that such lands may be allowed all the incidents of private property.

PRESIDENT.—These are only casual remarks made by the Councillor, but not as representing Government. This is not the stage at which any remarks may be made about amendments which have been passed.

MR. NAGAPPA.—It is only at the stage of the passing of the bill that we may make remarks generally upon the bill. We would like to make some remarks then.

PRESIDENT.—This is not the stage at which all shades of opinion may be allowed to be expressed, and especially whether the provisions are *ultra vires* or not. As you may be aware, this bill has to pass a further stage before it is finally passed; and there are stages at which it is open to the Senior Councillor as a member of Government to bring to notice any fact bearing upon the question, whether what the

Council has adopted is *ultra vires* or inconsistent with the existing law. But, as a member of this Legislative Council, he has simply at the conclusion of the proceedings to say in the words of the rules that have been passed for the conduct of the business of the Council that the bill will be taken up at a later stage and passed. There are other stages through which the bill has to pass before it is finally passed. At any of those stages, the Councillor may bring to the notice of the Government any question bearing upon the *ultra vires* aspect of the legislation.

The Council agreed to take up the bill at a subsequent meeting.

The Police Bill.

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to present the report of the Select Committee appointed for the consideration of the Police Bill and the bill as amended by them and to move that the bill be taken up for consideration by this Council.

MR. T. ANANDA RAO.—I beg to second the motion.

PRESIDENT.—Now we will proceed with the different amendments brought forward.

CLAUSE 3, SUB-CLAUSE 1 (i).

MR. K. P. PUTTANNA CHETTY.—I beg to propose that for the words "Village Offices Regulation" occurring herein, the words "any law or rules in force relating to village offices" be substituted.

MR. C. SRINIVASIENGAR.—I beg to second the proposition.

The Council agreed to this.

MR. C. SRINIVASIENGAR.—I have got a small amendment here. Who is a toti or talari as distinguished from village watchman? Are not totis and talaris village watchmen? I would therefore propose to omit the words "totis, talaris."

MR. RANGASWAMI IYENGAR.—They may have other duties and the word 'talari' does not mean merely a watchman.

MR. SRINIVASIENGAR.—Does not the word 'watchman' include a talari?

MR. RANGASWAMI IYENGAR.—To act as watchman is one of the duties of the toti and the talari.

MR. SRINIVASIENGAR.—All the same, they are watchmen. Is not a toti a watchman?

PRESIDENT.—He may or may not be.

MR. RANGASWAMI IYENGAR.—He may have other duties in connection with the Police Regulation independently of the duties of the village watchman. Therefore a toti is spoken of as a village watchman or in any other capacity.

MR. SRINIVASIENGAR.—I beg to withdraw the amendment.

Mr. Srinivasiengar withdrew his amendment.

CLAUSE 4.

MR. SRINIVASIENGAR.—Sir, I beg to propose that after the word 'Jamadar' in sub-clause (*c*) be added either 'except where a different intention appears from the subject or context' or 'except where otherwise expressly mentioned.'

MR. PUTTANNA CHETTY.—This is already provided for in the beginning of the clause.

MR. SRINIVASIENGAR.—When you go to clauses 8, 9 and 10, you will see the reason for this amendment. There are amendments proposed to be moved by Government and when you go to those clauses I will try and make myself understood.

This was reserved for consideration.

CLAUSE 4, SUB-CLAUSE (1).

MR. PUTTANNA CHETTY.—Sir, I beg to propose that the words "or vehicle" be added after the word "place" in the 7th and 9th lines of this definition and the word "or" occurring before the word "place" in both these lines be omitted.

MR. B. NAGAPPA.—I second it.

The amendment was adopted.

CLAUSES 8 AND 9.

MR. PUTTANNA CHETTY.—Sir, I beg to move that the following be substituted for clauses 8 and 9 :- -

"8. The appointment of Inspectors of such grades as Government may from time to time prescribe shall be made by Government, and the dismissal of Inspectors of all grades shall vest in Government."

"9. (1) The appointment of Inspectors of grades other than those prescribed under Section 8 and of Sub-Inspectors shall vest in the Inspector-General.

(2) Police officers of the rank of Jamadar shall be appointed in each district by the Deputy Commissioner.

(3) Police officers below the rank of Jamadar shall be appointed in each district by the District Superintendent.

(4) The appointment of all officers of any Provincial Reserve Police force, except Inspector of the grades prescribed under Section 8, shall be made by the Inspector-General.

Provided that all appointments made under this section shall be subject to such rules as the Government may from time to time prescribe."

I beg to explain that the sections as now proposed are in accordance with the orders in force ; that is to say, all appointments of grades below Rs. 100 are made by the Inspector-General of Police and those above that sum come up before Government for sanction. This is the present rule and it is proposed to revise these sections accordingly.

MR. ANANDA RAO.—I beg to second the amendment.

The Council resolved to adopt the above amendment.

MR. SRINIVASIENGAR.—I withdraw the amendment I suggested in clause 4, which was reserved for consideration after the discussion of clauses 8, 9 and 10.

CLAUSE 10, SUB-CLAUSE (1).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Ananda Rao, that the words "Every Inspector and Sub-Inspector" be substituted for "An Inspector" in the first line and the words "or Sub-Inspector, as the case may be" be inserted after the word "Inspector" in the 6th line.

This was agreed to by the Council.

CLAUSE 10, SUB-CLAUSE (2).

MR. PUTTANNA CHETTY.—I beg to propose that for the word "Inspector" occurring in this sub-clause, the word "Sub-Inspector" be substituted and the following added at the end :—

"And every such Police Officer enrolled in any Provincial Reserve Police Force shall receive a certificate in Form II of Schedule B from the Inspector-General."

We have provided that all appointments below the grade of Sub-Inspectors shall be made by Deputy Commissioners and Superintendents of Police and certificates of appointment granted by Deputy Commissioners. But in the case of Reserve Police, these shall be issued by the Inspector-General of Police, because they are directly under his orders.

MR. B. NAGAPPA.—I beg to second the amendment.

MR. SYED AMIR HASSAN.—What objection is there to Superintendents issuing certificates ?

MR. PUTTANNA CHETTY.—Though the appointment may be made by the Superintendent, the sannad proceeds from the Deputy Commissioner. The Deputy Commissioner is the head of the District and there is greater prestige in the certificate being furnished by him than by the Superintendent.

MR. SRINIVASIENGAR.—The signature of the head of the District will invest the certificate with a certain degree of respect.

MR. SYED AMIR HASSAN.—In some cases I know Deputy Commissioners have refused to sign certificates, because the appointments were made by Superintendents.

MR. PUTTANNA CHETTY.—If there is a difference between the Deputy Commissioner and the Superintendent, it may be brought to the notice of the Inspector-General.

MR. NARASIMMIYENGAR.—The Superintendent sometimes may sign for the Deputy Commissioner and the difficulty may be got over that way.

The amendment proposed was agreed to by the Council.

CLAUSE 10, SUB-CLAUSE (3).

MR. SRINIVASIENGAR.—I beg to move that the word "appointment" be substituted for "enrolment" in sub-clause (3), and the words "to any officer empowered to receive the same" occurring in the last line omitted, and also that this sub-clause be incorporated in sub-clause (2), as it is not necessary that it should remain as an independent sub-clause. The word used in the original bill was "appointment," and I do not understand why the Select Committee substituted the word "enrolment" for it.

MR. K. P. PUTTANNA CHETTY.—"Enrolment" means first entry into the Police Department.

Mr. SRINIVASIENGAR.—When a man is promoted to the Jamadar's grade, does he not get any certificate?

MR. K. P. PUTTANNA CHETTY.—He does not get any. The certificate on the first enrolment holds good. He does not get a new certificate on each promotion but only on his first enrolment as a Constable, Duffedar or Jamadar and again on his promotion to the grade of Sub-Inspector, when he gets it from the Inspector-General.

MR. SRINIVASIENGAR.—There is no mention of the word "enrolment" in Schedule B, Form II.

MR. RANGASWAMI IYENGAR.—I don't think we need be so particular about the words "enrolment" and "appointment." Perhaps the wording is borrowed from the Act of 1861.

MR. PUTTANNA CHETTY.—"Enrolment" includes appointment.

After further discussion it was resolved by the Council to insert the word "such" between the words "every" and "certificate" in the first line, to omit the words "of enrolment" after the word "certificate" in that line and also the words "to any officer empowered to receive the same" occurring at the end of the sub-clause and to incorporate this sub-clause in sub-clause (2).

SCHEDULE B, FORMS I & II.

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. B. Nagappa that $\frac{\text{"Inspector"}}{\text{"Sub-Inspector"}}$ be substituted for "Inspector" in both the places in which it occurs in Schedule B, Form I and that "Sub-Inspector" be substituted for "Inspector" in Schedule B, Form II.

This was agreed to by the Council.

MR. SRINIVASIENGAR.—Sir, I beg to propose that either the words "length of service, if any" be added in Form II or the same be omitted in Form I.

MR. PUTTANNA CHETTY.—This question was discussed in the Select Committee and it was thought that when an Inspector or Sub-Inspector is appointed, it would be better to specify his service, to serve as a sort of check upon the officer making the appointment. Such a provision exists in the Bombay Act.

MR. SRINIVASIENGAR.—Suppose a Judicial Gumasta is appointed a Jamadar. Am I to understand that there is no necessity to specify the length of his service?

MR. RANGASWAMI IYENGAR.—This means length of service in the Police Department.

MR. SRINIVASIENGAR.—I am not particular about the amendment. I withdraw it.

The amendment was withdrawn.

CLAUSE 12.

MR. SRINIVASIENGAR.—Sir, I beg to propose that the last 3 lines of this clause be omitted. In clause 24 it is said that "subject to the orders of Government, the Inspector-General may from time to time make rules or orders." It means that subject to the orders of Government he is authorized to make rules or orders. Why is the same provision repeated in this clause?

MR. PUTTANNA CHETTY.—In this clause reference is made in a general way to the powers of the Inspector-General of Police.

MR. SRINIVASIENGAR.—Why is it specially mentioned here that subject to the approval of Government, the Inspector-General may make rules and orders under the provisions of Sections 24 and 25? Section 25 does not refer to orders but to inspections and requisitions for returns, etc.

MR. PUTTANNA CHETTY.—We have taken these provisions bodily from the Bombay Act. It is necessary to say what powers the Inspector-General has got over the department as a whole and they have been specified here.

MR. RANGASWAMI IYENGAR.—When it is a question of making general requisitions, it means framing rules for the submission of reports, returns, etc.

The amendment proposed was then withdrawn by Mr. Srinivasiengar.

CLAUSE 13.

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. B. Nagappa that the words "prescribed and" be inserted after the word "be" in the last line.

This was agreed to by the Council.

CLAUSE 15, SUB-CLAUSE (1).

MR. SRINIVASIENGAR.—Sir, I beg to propose that the words "except where otherwise provided" be inserted after "the District Superintendent may" in this sub-clause.

MR. PUTTANNA CHETTY.—I would support Mr. Srinivasiengar's amendment. If the expression "except where otherwise provided" be not inserted, the meaning would be too general. The proposed amendment is necessary.

PRESIDENT.—What is the necessity for it? There is a provision governing the whole.

MR. SRINIVASIENGAR.—The District Superintendent is empowered to exercise the powers of the Deputy Commissioner subject to rules and orders. The Deputy Commissioner has got certain powers of appointment and punishment. The District Superintendent will exercise them, unless he is restricted from so doing by rules and orders to be framed. The Code gives certain powers to the Deputy Commissioner and certain powers to the District Superintendent. While it is expressly stated in the Code itself that each one has certain powers, why should we give all the powers of the Deputy Commissioner to the District Superintendent and why should it not be said that he will exercise them subject to reservations? Our rules have to say that the District Superintendent shall not exercise such and such functions. A strict interpretation of this section would be that he carries all the powers of the Deputy Commissioner, while in fact he does not do so.

MR. RANGASWAMI IYENGAR.—The better way to put Mr. Srinivasiengar's objection is that there is inconsistency in the provisions. In the Code only certain powers are given to the District Superintendent, but in this section all the powers of the Deputy Commissioner are given to him. The object of this section was that the Deputy Commissioner should be able to delegate his powers to the Superintendent, when he himself is not able to direct personal attention to certain matters, for instance, nomination of Jamadars, etc. This seems to be the object. There may be other similar provisions, such as calling Inspectors to account and so on. For the proper discharge of current duties, this section was introduced.

The proposal to insert the words "except where otherwise provided" after the words "the District Superintendent may," was withdrawn by Mr. Srinivasiengar.

Proposed by Mr. Srinivasiengar and seconded by Mr. Puttanna Chetty that the word "and" be inserted after the word "law" in para (*e*) and that the words "questions of routine" be substituted for "all other matters of a routine nature" in para (*f*).

This was agreed to by the Council.

CLAUSE 15, SUB-CLAUSE (2).

MR. SYED AMIR HASSAN.—I beg to withdraw the suggestion standing against my name in the statement of business.

MR. SRINIVASIENGAR.—Is the position of the Amildar in the Police Department affected by the Regulation?

MR. RANGASWAMI IYENGAR.—Mr. Carr represented strongly that the Inspector should be recognized as the head of the Taluk Police in preference to the Amildar. We effected a compromise by saying that the Inspector is directly responsible for the Taluk Police and that the Amildar will be his superior officer, to whom the former is responsible.

MR. PUTTANNA CHETTY.—In fact, the Inspector, according to this Regulation, will have greater powers over the Taluk Police.

MR. RANGASWAMI IYENGAR.—Under the existing conditions, the Amildar is *de facto* the head of the Taluk Police, whereas under the Regulation we recognize the Inspector as the responsible head. The Amildar will have general control over the Inspector. In fact, we relieve the Amildar from responsibilities in small matters and give him powers of control over the Police in his Taluk. The main difference is this. In the existing state of things, the Inspector would not be more than a Taluk Sheristadar. Hereafter he will be something more. He will also be blamed as an independent officer for any shortcomings, unless he can show that the Amildar overruled him. We only relieve the Amildar from certain unnecessary trouble.

MR. PUTTANNA CHETTY.—The Regulation strengthens the position of the Amildar and makes the Inspector more responsible than he was before. First of all the Inspector will be held responsible for police work in the Taluk and then the Amildar over him. This is what Mr. Carr did not want. But the Committee overruled him.

CLAUSE 17, SUB-CLAUSE (1).

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. C. Srinivasiengar that this sub-clause do stand as in the original bill and that the indefinite articles "an" and "a" be inserted before "officer" and "Police Station," respectively, in the twelfth line of this clause.

This was agreed to by the Council.

CLAUSE 17, SUB-CLAUSE (2).

MR. SRINIVASIENGAR.—Sir, I beg to propose that the words "of office" be omitted in the last line or be replaced by the words "of appointment." There is no such thing as a certificate of office; there is only the certificate of appointment. I think "a certificate" will do.

MR. RANGASWAMI IYENGAR.—I think "of office" may be omitted.

PRESIDENT.—What harm is there in retaining them?

MR. SRINIVASIENGAR.—There is no harm, but we will be consistent in the wording if we use the words "certificate of appointment." I am not particular about the amendment and I withdraw it.

The amendment was withdrawn.

CLAUSE 18, SUB-CLAUSE (2) & CLAUSE 19, SUB-CLAUSE (2).

MR. SRINIVASIENGAR.—Sir, I beg to move that provision may be made in clause 18 (2) for rates and payment as in clause 19 (2), and in 19 (2) for the subjection of the additional police to the police authorities as in 18 (2). In both cases the employment of additional police is intended, but certain provisions occurring in the one are omitted in the other.

MR. RANGASWAMI IYENGAR.—As regards the former, it seems to me that no special provision need be made, as the cost will have to be paid by the individual whatever it may come to. As regards the latter, it seems to me to be desirable to insert a provision similar to that contained in 18 (2), as, in the absence thereof, it might be taken to mean that the police employed are under the exclusive control of the man in charge of the work.

PRESIDENT.—In the case of a private individual, there is danger of the additional police employed being kept under his control and so it seems to be expressly provided that the police shall be subject to the orders of the police authorities.

MR. RANGASWAMI IYENGAR.—Perhaps the words "may depute" occurring in clause 19 (1) convey the idea of the retention of control by the police authorities.

MR. PUTTANNA CHETTY.—There is no harm in repeating the words.

Mr. NAGAPPA.—It seems unnecessary.

MR. RANGASWAMI IYENGAR.—To make the wording uniform, the words "and shall be subject to the orders of the police authorities" may be added at the end of clause 19 (2).

This was approved by the Council.

The other amendment in respect of clause 18 (2) was withdrawn by Mr. Srinivasiengar.

CLAUSE 20.

MR. SRINIVASIENGAR.—Sir, I beg to propose that the words "and the sum so ascertained may be levied as if it were an arrear of land revenue" be omitted.

MR. PUTTANNA CHETTY.—This provision may be brought under clause 23.

PRESIDENT.—I don't see any harm in keeping it.

MR. SRINIVASIENGAR.—I withdraw the amendment.

The amendment was withdrawn.

CLAUSE 22, SUB-CLAUSE (1).

MR. PUTTANNA CHETTY.—Sir, I beg to move that the words "three months" occurring herein be replaced by the words "one month" which was the time fixed in the original bill. In making this motion I beg to state that "three months" is rather too long a time to allow for applications of this kind. When the summary jurisdiction of the Deputy Commissioner is invoked, it is better that action is taken as early as possible before there is time for concoction. In the Bombay Act, only one month is prescribed.

MR. NARAYANA RAO.—I second the amendment.

The amendment was approved.

CLAUSE 22, SUB-CLAUSE (2) (*c*).

MR. SRINIVASIENGAR.—Sir, I beg to move that for "loss, or damage, or death, or grievous hurt" the words "death, or grievous hurt, or loss, or damage" may be read. There is no object in changing the order of words.

This was approved by the Council.

CLAUSE 22, SUB-CLAUSE (5).

MR. SRINIVASIENGAR.—Sir, I beg to move that for the words "declaration, assessment and order" occurring herein, the words "determination, declaration, recovery and award or appointment" be substituted; or at any rate, the word "determination" be inserted before "declaration" and the words "sub-section (1)" in the third line be substituted by "sub-section (2)."

MR. PUTTANNA CHETTY.—This section is adopted from the Bombay Act of 1890.

PRESIDENT.—The Bombay Act has been in operation for 18 years and the Act has not been amended there. I think we had better leave the wording alone.

MR. SRINIVASIENGAR.—I withdraw my amendment then.

The amendment for the substitution of "sub-section (2)" for "sub-section (1)" was adopted by the Council, the other amendment being withdrawn by Mr. Srinivasiengar.

CLAUSE 22, SUB-CLAUSE (6).

MR. SRINIVASIENGAR.—Sir, I beg to move that the words "loss or" occurring herein be omitted. This also may have been taken from the Bombay Act. I don't see the object in singling out "loss." Anybody that is affected either by death, or grievous hurt or loss of or damage to property is a man that is injured and can claim compensation for the injury, which is sufficiently comprehensive to include all these [*vide* sub-clause (1)]. The word "loss" is unnecessary and misleading.

MR. NAGAPPA.—"Injury" may mean bodily injury or any violation of right.

MR. SRINIVASIENGAR.—How can it in the face of sub-clause (1)? However, I withdraw the amendment proposed.

The proposed amendment was withdrawn.

MR. PUTTANNA CHETTY.—Sir, I beg to move that the word "awarded" be substituted for the words "granted and received."

MR. ANANDA RAO.—I second the amendment.

MR. RANGIENGAR.—If money has been received, then the person who has sustained injury cannot go to Court. This question came before the previous Police Committee and they were of opinion that he should have received the compensation, in which case only he should be prevented from going to Court.

The amendment was put to the Council and was carried.

CLAUSE 23.

MR. SRINIVASIENGAR.—Clause 20 remaining as it was, I withdraw the proposed amendment in clause 23, *viz.*, substitution of the word "three" for "two," of which notice had been given by me.

The Council adjourned to the next day (26th March 1908).

THURSDAY, 26TH MARCH 1908.

The Council met at 3 P.M.

PRESENT—All except Mr. M. Kantharaj Urs.

CLAUSE 25.

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. Nagappa that the words "from the District Superintendent and other officers subordinate to him and from the Deputy Commissioner" be substituted for the words "from the Deputy Commissioner and other officers subordinate to him."

This was agreed to by the Council.

CLAUSE 26, SUB-CLAUSE (1).

MR. C. SRINIVASIENGAR.—Sir, I beg to propose that the words "below the grade of Assistant Superintendent" occurring in this sub-clause be omitted, and in the last line but two the word "reduction" be inserted after the word "suspension."

MR. K. P. PUTTANNA CHETTY.—I beg to second the first proposition. The words "below the grade of Assistant Superintendent" are quite unnecessary.

MR. C. SRINIVASIENGAR.—Under sub-clause (3), the Inspector-General has authority to punish certain officers and the Deputy Commissioner, certain other officers. Sub-clause (3) is referred to in sub-clause (1). The words "below the grade of Assistant Superintendent" would not be correct, unless applied to the powers of the Inspector-General of Police only.

MR. K. P. PUTTANNA CHETTY.—The wording leaves much to be desired. We have copied it from the Bombay Act.

MR. A. RANGASWAMI IYENGAR.—The words would mean police officers coming under sub-clause (3) and would include only those officers who are liable to be punished by the different higher officers as therein stated. Instead of omitting the words as suggested, the whole of sub-clause (1) may be omitted.

MR. K. P. PUTTANNA CHETTY.—But the provision made in the sub-clause is a general one and does not occur elsewhere.

MR. A. RANGASWAMI IYENGAR.—If so, I think the words are necessary and should be retained. They only indicate the officers who may be punished.

PRESIDENT.—The provisions in this sub-clause refer only to officers below the grade of Assistant Superintendent.

MR. A. RANGASWAMI IYENGAR.—These words "officers below the grade of Assistant Superintendent" include all the officers punishable under sub-clause (3).

MR. V. N. NARASIMMIYENGAR.—It is immaterial whether we keep these words or not.

PRESIDENT.—Mr. Rangaswami Iyengar says that the sub-clause merely lays down a general proposition that it is only this class of officers that shall be liable to punishment and not others, and that sub-clause (3) takes one by one separately and indicates the authority who shall punish the different classes of officers.

MR. C. SRINIVASIENGAR.—Sub-clause (1) begins with a reference to sub-clause (3). The officers entitled to punish are three. These are clubbed together and one common expression is used. It is only a verbal change that I have proposed. I leave it to the Council to accept or drop it.

PRESIDENT.— What is said is that only the class of officers below the grade of Assistant Superintendent shall be liable to be punished. Then sub-clause (3) takes the different classes of officers below that grade and says who shall punish whom. So there is no harm in retaining the words.

Mr. Srinivasiengar accordingly withdrew the amendment proposed as regards the omission of the words "below the grade of Assistant Superintendent."

PRESIDENT.—As regards the insertion of the word "reduction" after the word "suspension," there may be some meaning in the omission of that word in the Bombay Act. Reduction involves a permanent decrease of pay. The sub-clause contemplates fining a month's pay in cases where suspension or dismissal is not required. If reduction is thought of, no fine is necessary. That is perhaps why it is omitted.

MR. C. SRINIVASIENGAR.—This is a verbal amendment and I would withdraw it under the circumstances.

This was withdrawn.

CLAUSE 26, SUB-CLAUSE (3).

MR. K. P. PUTTANNA CHETTY.—I beg to propose that the words "subject to the provisions of Section 8" be inserted at the beginning of this sub-clause, and the words "of and" after "him" in the 7th line and the word "sub" before "Inspector" in the 8th line.

MR. C. SRINIVASIENGAR.—I second this.

MR. A. RANGASWAMI IYENGAR.—I think the section may stand as it is, because it is a broad one which will apply to all cases. In the construction of one section of an enactment, the restrictions laid down in other sections would apply and no express reservation seems to be necessary.

MR. C. SRINIVASIENGAR.—It seems necessary to refer to Section 8 in this sub-section as the Inspector-General cannot dismiss Inspectors and dismissal is also one kind of punishment.

MR. A. RANGASWAMI IYENGAR.—In considering any one section, it must be considered consistently with the other provisions of the Code. It is an ordinary principle of interpretation.

MR. K. P. PUTTANNA CHETTY.—We want to make it clear what the powers of the Inspector-General are.

MR. C. SRINIVASIENGAR.—I have also given notice of an amendment in respect of this sub-clause, but it is not very important and I may be allowed to withdraw it; but the other one proposed by Mr. K. P. Puttanna Chetty and seconded by me may be passed. The other alterations are consequential.

PRESIDENT.—We may make the clause clumsy by inserting too many conditions. So if the Council agrees, we may adopt Mr. Puttanna Chetty's amendment and make the matter clear once for all.

MR. A. RANGASWAMI IYENGAR.—Yes, it certainly makes the matter clearer.

The amendments proposed by Mr. Puttanna Chetty were adopted.

CLAUSE 27, SUB-CLAUSE (1).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the original wording of sub-clause (1) be restored as the amendment made by the Select Committee does not seem to have improved it.

MR. T. ANANDA RAO.—The words "under his signature" should have come after "therefor."

MR. C. SRINIVASIENGAR.—"Together with a note of the enquiry made under his signature" is perhaps what is meant.

MR. A. RANGASWAMI IYENGAR.—The order is more important than the note of enquiry.

MR. C. SRINIVASIENGAR.—The sub-clause is clumsily worded. The Select Committee tried to improve upon it. According to the original "with" has to be taken as understood before "a note;" according to the Select Committee's alteration, "shall be" has to be taken as understood before "made."

MR. A. RANGASWAMI IYENGAR.—"Signed" applies to the record. I think the original was better. "And signed by him" does not fit in.

MR. C. SRINIVASIENGAR.—It can come in if the words "shall be" are read before "made." If the whole is to be signed including the order, the original is better.

MR. H. J. BHABHA.—There are many superfluous words; "in writing" may be omitted.

PRESIDENT.—What do you understand the procedure to be? Why should we not re-cast the whole section?

MR. A. RANGASWAMI IYENGAR.—It seems that in this section three ideas are intended to be expressed: (1) that punishment has to be given only after enquiry; (2) the substance of the enquiry, the order and the reasons therefor have to be recorded and (3) these have to be signed.

MR. T. ANANDA RAO.—Why not say 'and sign the same' instead of 'and signed by him'?

MR. K. P. PUTTANNA CHETTY.—We may let the whole thing remain as it stood originally.

PRESIDENT.—Then we will adopt Mr. Puttanna Chetty's amendment.

The Council agreed to adopt the same.

CLAUSE 27, SUB-CLAUSE (2).

MR. K. P. PUTTANNA CHETTY.—I beg to propose that for the words "the order" occurring in line 3 of this sub-clause, the words "all orders" be substituted.

MR. C. SRINIVASIENGAR.—I beg to second this.

PRESIDENT.—What harm is there if the expression 'the order' is allowed to stand?

MR. H. J. BHABHA.—I think it is only to make it uniform that the amendment has been proposed.

MR. A. RANGASWAMI IYENGAR.—As the Deputy Commissioner and the District Superintendent of Police are supposed to exercise co-ordinate powers, there may arise a doubt as to whether an appeal from the order of a District Superintendent lies to the Deputy Commissioner or not. This section makes that point clear. There is no harm in keeping the words as they are.

MR. C. SRINIVASIENGAR.—As the expression stands, does it mean that a 'second appeal' lies to the Inspector-General? It looks as if it were an appeal from an appellate order but the idea is that an appeal lies from every order passed by a Deputy Commissioner.

The amendment was put to the Council and was carried.

CLAUSE 28.

Proposed by MR. PUTTANNA CHETTY and seconded by MR. SRINIVASIENGAR that the word "any" in line 2 of sub-clause (1) be substituted by the word "the" and the words "his immediate superior" at the end of sub-clause (2) by the words "the Inspector-General or the Deputy Commissioner, as the case may be."

This was approved by the Council.

CLAUSE 30.

The amendments to this clause of which notice had been given by Mr. Srinivasiengar were withdrawn by him.

CLAUSE 32, SUB-CLAUSE (1).

The proposal to omit the words "or of office" occurring in this sub-clause was withdrawn by Mr. Srinivasiengar.

CLAUSE 33, SUB-CLAUSE (3).

MR. SYED AMIR HASSAN.—I beg to propose that the words "within seven days" be inserted between the words "duty" and "on" in this sub-clause. According to

this sub-clause, the absentee will be liable to be prosecuted the very next day. It seems desirable to allow him some time after the expiry of the leave to report himself for duty and provide for his prosecution only if he should fail to do so within that time.

MR. C. SRINIVASIENGAR.—In fact we intend this for the benefit of the man. No time is fixed; he may furnish his explanation even after seven days.

MR. A. RANGASWAMI IYENGAR.—The object of the proposed amendment is that officers must wait for a certain time before taking action. If the man does not come immediately after the expiry of the leave, the officer is likely to presume that he has been absent without cause. The amendment proposed will prevent him from taking immediate action.

MR. SYED AMIR HASSAN.—The limit I have proposed is allowed by the existing rules.

MR. A. RANGASWAMI IYENGAR.—It is a useful one. I would second it. Action is deferred for the first seven days.

MR. K. P. PUTTANNA CHETTY.—Sufficient time is given in the rules.

MR. A. RANGASWAMI IYENGAR.—If so, the amendment would be unnecessary.

The amendment proposed was withdrawn by Mr. Syed Amir Hassan.

Mr. Syed Amir Hassan also withdrew the amendment proposed to be moved by him, that in clauses 33, 34, 57 and 61, the words "of either description" be inserted between the words "imprisonment" and "for."

CLAUSE 34.

The proposal to omit the words "or of office" of which notice had been given by Mr. Srinivasiengar was withdrawn by him.

OLD CLAUSE 35.

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that this clause which was expunged by the Select Committee be restored in the following terms of section 38 of Bombay Act IV of 1890:—

"Government, whenever it shall seem necessary, may, by notification make an order to such effect as any order which, if made by a Magistrate under section 144 of the Code of Criminal Procedure, could be continued in force by Government under the enactment aforesaid."

This is an exceptional provision and we can imagine circumstances in which Government may have to issue such an order without reference to the Inspector-General of Police or the District Magistrate. So it would be very desirable to retain this provision as in the Bombay Act.

MR. C. SRINIVASIENGAR.—I beg to second the amendment.

MR. B. NAGAPPA.—I beg to oppose the amendment for manifold reasons. It has the effect of investing the authorities with arbitrary powers to be exercised without giving the party affected any opportunity of showing that the proposed order was unjust, unreasonable and uncalled for. The Government may act upon the information or representation made by an interested person and it may pass the order without calling for any report from the local authorities who are the best judges to pronounce an opinion as to the disturbed condition of the local area and to the desirability of immediate preventive or other speedy remedy to be adopted. The effect of this amendment is to invest the Government with power to make any order in all cases other than those specially mentioned in section 144. This would set at naught the cardinal principle of securing to every person the enjoyment of his rights under the law. This, I submit, is an innovation likely to cause great harm to the public. The Select Committee appointed by the Council have wisely recommended the omission of this clause. I earnestly hope that this Council will duly consider the recommendation before voting on this amendment.

MR. A. RANGASWAMI IYENGAR.—This provision which will apply to the passing of the order will also apply to the cancelling of the same. There is nothing to prevent one from petitioning to Government to cancel the order if it is hard. When Government is supposed to act under section 144, it is bound to take the representation.

MR. B. NAGAPPA.—Provision is made in the amendment only for Government passing such orders. I submit that this is an innovation.

MR. A. RANGASWAMI IYENGAR.—This is not a new provision. It is taken from the Bombay Code.

MR. M. C. RANGIENGAR.—I submit that Government cannot act under section 144. What they can do is, after the Magistrate passes the order in any case, they may extend the period of its operation. The procedure prescribed in the Criminal Procedure Code, is for the Magistrate to follow. It is not obligatory on Government to follow that procedure. Therefore if in the present Regulation, power is given to Government for passing an order upon its own initiative without waiting for a Magistrate holding an enquiry or passing an *ex parte* order, they will not be bound to follow the procedure laid down in section 144. Reference to section 144 of the Criminal Procedure Code in this Regulation is merely to the nature of the order that may be passed and not to the procedure that Government has to follow. As submitted to the Council by my learned friend, it is not necessary that Government should be invested with power to pass an order of this description upon its own initiative, as its own officers will be on the spot and will have cognisance of the matter which necessitates the passing of the order. If the local officers are of the same opinion as Government, then Government may direct a competent Magistrate to pass the necessary order. On the other hand where local officers are satisfied that there is no necessity for such an order, but Government considers that such an order should be passed, then Government has to exercise the power in a more formal manner than is proposed to be adopted. Here there is no restriction imposed upon the powers of Government. No enquiry is required to be made. Government may get some information from some individual and may pass an order thereon. It is open to the Magistrate to pass an *ex parte* order, and the party who is affected by the order has an opportunity of representing his grievance and it is not open to the Magistrate to decline to consider it. But it is not obligatory upon Government to hold any enquiry. I therefore beg to submit that the recommendations of the Select Committee may be adopted.

MR. S. NARAYANA RAO.—It seems to me that the provision in the Bombay Code is intended to meet extraordinary cases where Government is required to take action very promptly. If such an emergency arise, the provision would be very useful, in the interests of the protection of life and property of the subjects. But the question for consideration would then be whether Government would misuse this power. I submit it would be simply entertaining a doubt as to the capacity of Government to use the power rightly. The question simply resolves itself into this, whether it is not safe at all to invest Government with such a power on the ground that at times it might be misused. Seeing that an emergency may arise when prompt action may be required to be taken, the clause may be retained.

MR. K. P. PUTTANNA CHETTY.—As explained by the last speaker, this extraordinary provision is intended to meet extraordinary emergencies, occasions when Government will have to act on its own initiative and without reference to local officers. It may be that the local officers, by not properly estimating the force of circumstances, or by perversity, may not take a proper view of the situation. In these circumstances, Government may be called upon to act in the interests of the public peace. I think such a provision is very necessary and I request the Council to consider this aspect of the case before they vote for or against it.

MR. A. RANGASWAMI IYENGAR.—The chief objection that is taken by my friends on the other side is that the safeguards which exist in the case of the District Magistrate or other Magistrate empowered to act under Section 144 of the Criminal Procedure Code do not exist in the case of Government. But I would request them to read clauses (2) and (5) of that section. The Magistrate taking action thereunder is competent to make an *ex parte* order, which will be in force for two months and such order Government is competent to extend without giving notice to or hearing parties. What is now proposed is that Government may pass such an *ex parte* order itself. So this is not any extraordinary power newly arrogated to Government. Further it will be seen that the cases in which Government will act are also extraordinary cases of danger to human life, safety, etc., so that, it is intended to meet only extreme cases of emergency.

MR. B. NAGAPPA.—A word in reply is necessary. Under clause (4) of Section 144, a Magistrate may rescind or cancel the order passed, if he is satisfied on hearing the parties or otherwise that there is no necessity for it. If it is not cancelled, Government may extend the order for a further period beyond two months for which it shall otherwise remain in force. So, before this power is exercised by Government, the parties will have had an opportunity of being heard and will have been heard by the Magistrate; whereas according to the amendment contemplated, Government may not hear the parties at all. If Government pass an *ex parte* order, no time limit is fixed for which such an order is to remain in force. Such being the case, an *ex parte* order of the kind contemplated by the proposed clause will work hardship.

MR. T. ANANDA RAO.—I would like to make one enquiry for my information. Suppose a Magistrate after holding an enquiry under Section 144 of the Criminal Procedure Code refuses to pass an order and the danger continues. What is the remedy then? Is there an appeal against his order? Or is there a revision? Government shall have to interfere here.

MR. B. NAGAPPA.—Then the District Magistrate must be incompetent. I cannot conceive of such a case occurring.

PRESIDENT.—Yes. If a case occurs either by the incompetency or the perversity of the Magistrate as observed by the Second Councillor, what is the remedy?

MR. C. SRINIVASIENGAR.—You say you can trust the District Magistrate. Why not credit Government with some common sense? Why should you distrust them?

MR. M. C. RANGIENGAR.—There is provision for an enquiry under the Criminal Procedure Code, which Government is not bound to make under the proposed amendment.

MR. C. SRINIVASIENGAR.—What Government want is that they be empowered to pass in the first instance an order which, if passed by a Magistrate, they can continue. This is perfectly reasonable.

PRESIDENT.—If we are erring at all, we are erring in good company. We are taking the provision from the British legislature. The very words we propose to introduce into our legislation are used in the Bombay Act.

MR. B. NAGAPPA.—The section in the Bombay Act was passed in 1898. There was then some sedition in Bombay and there was therefore some cause for the Government to pass such a measure. We in Mysore are perfectly loyal and law-abiding people and there is no reason for apprehending a similar state of things here.

PRESIDENT.—The Council will see that we have a good precedent to go upon, and it is only in cases of extraordinary emergency when public safety will be endangered by any delay in taking action or when the local authorities have not formed a proper conception of the gravity of the situation that Government will intervene. It is as well that they should reserve such a power for themselves. This is a provision intended for public safety.

MR. M. C. RANGIENGAR.—But there may be a provision for a subsequent enquiry or the period of time for which the order shall remain in force may be limited.

PRESIDENT.—I do not think this to be necessary.

MR. M. C. RANGIENGAR.—"Until the Magistracy takes action in the matter" or some such words may be used. Otherwise, the provision will frighten the public.

PRESIDENT.—It is imaginable that there may be circumstances under which Government would be justified in taking prompt action, and it would be inexpedient to call upon a Magistrate to take the necessary action.

MR. M. C. RANGIENGAR.—Government may pass the order and direct that it be in force for such time as it considers necessary. As the section reads the order may remain in force for any length of time.

MR. C. SRINIVASIENGAR.—No. Only for two months. Government could only pass such an order as the District Magistrate can pass. It will be in force only for two months, unless it is further extended.

PRESIDENT.—No. The provision has reference only to the nature of the order and not to its duration.

MR. A. RANGASWAMI IYENGAR.—I also think that it is the nature of the order and not the duration that is contemplated.

PRESIDENT.—Government would rather like to be rid of any such power and would like to hand it over to the District Magistrate. It is only for meeting the moment's emergency that such power is required by Government. You may leave this alone, as otherwise it may work hardship the other way. A Magistrate may get paralysed in a case of emergency. Provision should be made to meet such cases so that Government may not be powerless in such circumstances and may step in and take prompt action to secure the public safety. As I said, we have a good precedent in the Bombay Act and I suppose we should not be erring very much if we adopt it.

The amendment was put to the Council and was carried, the votes being eight *for*, two *against* and one being *neutral*.

CLAUSE 35, SUB-CLAUSE (1).

Proposed by Mr. K. P. Puttanna Chetty that "letting" be substituted for "lighting" in line 3, para *(f)*, and that the word "deceased" be retained in para *(i)* and the words "as to" in para *(k)*.

These amendments were seconded by Messrs. V. N. Narasimmiyengar, A. Rangaswami Iyengar and B. Nagappa respectively and were approved by the Council.

CLAUSE 35, SUB-CLAUSE (2).

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. C. Srinivasiengar that the words "every rule, order or regulation" be substituted for the words "the rules, orders and regulations."

This was approved by the Council.

CLAUSES 35 & 36.

The amendments to these clauses which Mr. C. Srinivasiengar had proposed to move were withdrawn by him.

Proposed by MR. K. P. PUTTANNA CHETTY and seconded by MR. H. J. BHABHA that the word "a" be inserted before the words "longer period" in sub-clause (3) of clause 35.

This was approved by the Council.

CLAUSE 37.

Proposed by MR. K. P. PUTTANNA CHETTY and seconded by MR. B. NAGAPPA that the word "or" before the word "place" be omitted and the words "or vehicle" inserted after it, in the last line but one.

This was approved by the Council.

CLAUSE 38, SUB-CLAUSES (1) & (2).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the words "for reasons which he shall record" and "stating his reasons therefor," respectively, occurring in Sub-clauses (1) and (2) be omitted.

MR. RANGIENGAR.—It seems to me that it is necessary to retain these words as an appeal is allowed against these orders. Under Sub-clause (2), an order made by a subordinate Magistrate has to be confirmed by the District Magistrate. How can he confirm or cancel the order without any materials to go upon.

PRESIDENT.—Where is the time for a Magistrate taking action under this clause to record his reasons in writing? This is an emergent order and the course proposed by the Select Committee will defeat the object thereof. It is simply to see whether the subordinate Magistrate has used his discretion properly that sub-clause (2) directs that the order be communicated to the District Magistrate. If action is taken by the District Magistrate himself, there is full discretion given to him to pass any order he considers fit, but if it is taken by a subordinate Magistrate, he must communicate his order to the District Magistrate who will exercise his discretion and see whether he will confirm the order or cancel it. All this will have to be done on the instant, sometimes by word of mouth. The provision that reasons be recorded will unnecessarily hamper the taking of action by the Magistrate. Of course, the Magistrate will be held responsible if he passes a wrong order. If the Council will agree, Mr. Puttanna Chetty's amendment may be adopted.

The Council agreed to adopt the amendment.

CLAUSE 39.

Proposed by Mr. C. Srinivasiengar and seconded by Mr. Puttanna Chetty that the words "subject to the control of the District Magistrate" inserted by the Select Committee in this clause be omitted and the words "and subject to his control" be restored as in the original bill.

This was approved by the Council.

CLAUSE 40.

The amendment to this clause proposed to be moved by Mr. C. Srinivasiengar was withdrawn by him.

CLAUSE 41, SUB-CLAUSE (1).

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. C. Srinivasiengar that the words "by public notice" be inserted between the words "may" and "prescribe" in the 9th line of this sub-clause.

This was approved by the council.

CLAUSE 41, SUB-CLAUSE (2).

Proposed by Mr. K. P. Puttanna Chetty and seconded by Mr. C. Srinivasiengar that the wording of the original bill in this sub-clause be restored.

This was also approved by the Council.

CLAUSE 44, SUB-CLAUSES (1) AND (2).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the following be substituted for sub-clause (1) and that sub-clause (2) be omitted:—

"The District Magistrate, any first class Magistrate, any Amildar or Deputy Amildar may within the local limits of his jurisdiction, regulate, and control by the grant of license or otherwise, the conduct of all assemblies and processions, the playing of music, the beating of drums, tom-toms or other instruments and the blowing or sounding of horns or other noisy instruments in or near a street."

I beg to explain in this connection that the present amendment is based upon the existing practice. It is the Magistrate that grants the license. There is a rule to that effect in the Regular Police Rules. The Police carry out his orders. So, in the proposed amendment it is stated that the District Magistrate, any first class Magistrate or any Amildar or Deputy Amildar may regulate and control the conduct of assemblies etc., by the grant of licenses or otherwise. It is also proposed to expunge sub-clause (2). Under the existing practice an appeal lies to the District Magistrate from an order passed by a subordinate Magistrate. An order passed by the District Magistrate is however not appealable to Government under the Rules. It is true Government have taken up such cases and passed orders on them after hearing the representations of parties. But such orders have been in the way of directions to the District Magistrate and not as Government sitting in appeal over the dicision of the District Magistrate. The existence of a provision for appeal to Government will weaken the hands of the District Magistrate and will tend to make parties prefer such appeals in every case to Government. It seems much better to leave the matter entirely in the hands of the District Magistrate, and as heretofore Government may receive petitions and dispose of them in the exercise of the general powers which are vested in them in this behalf. What is now proposed is only to continue the existing practice and to omit the provision made for allowing a further appeal to Government in such matters.

MR. A. RANGASWAMI IYENGAR.—I would add only one word. The meaning of the word "may" is differently construed in different places. Although the word implies a certain amount of discretion, it may be taken to mean that for every procession, etc., a license is necessary. I think that it will be better to adopt the words "it shall be lawful, etc.," so as to make it clear that Magistrates may or may not take action.

PRESIDENT.—The Second Councillor's idea in proposing this amendment is not to break away altogether from the existing practice. He seeks to give a little prominence to the idea of licenses which does not exist in the Bombay Act, without insisting on a license being taken out in every case.

MR. A. RANGASWAMI IYENGAR.—"May" would imply that some action should invariably be taken. Half a dozen persons may go out for an invitation. They may

take a piper with them and they may be blamed for not taking out a license. My suggestion is purely a techinical one. It will give greater liberty of action and discretion to the Magistrate if the words "it shall be lawful" are used instead of "may."

PRESIDENT.—I think the idea was not to make too violent a departure from the existing practice and at the same time to indicate that licenses may be issued.

MR. K. P. PUTTANNA CHETTY.—It is not in every case that a license will have to be obtained. It is only in cases where the Amildar apprehends some disturbance, as for instance when there are factions in the village, that a license may be required to be taken out.

MR. B. NAGAPPA.—Sir, I beg to oppose the amendment as regards the omission of sub-clause (2). The reasons assigned by the learned mover of the amendment for omitting this sub-clause are twofold. He contends *firstly*, that there is no statutory power given to Government to hear appeals from the orders of the District Magistrate; *secondly*, that it will have the effect of weakening the power of the District Magistrate.

As to the first reason, I beg to submit that the District Magistrate passes the order in his capacity not as District Magistrate but as the head of the District Police. The practice invariably has been to allow appeals to Government from such orders; and several cases have been decided and many principles have been enunciated by Government in this connection. As to the second, a moment ago it was stated that there might be perversity on the part of a District Magistrate in passing orders, that he cannot be trusted therefore and that the intervention of Government was necessary. When a provision exists that Government has the power of hearing appeals against the orders of a District Magistrate, he will be more careful in passing his orders and the interests of parties will be safeguarded to a great extent.

MR. C. SRINIVASIENGAR.—The practice seems to be that petitions are presented to Government and not appeals.

MR. B. NAGAPPA.—Whether we call it petition or revision or appeal, Government have the power to interfere. At any rate, they have been revising the orders passed by the District Magistrate. If sub-clause (2) is omitted as proposed, Government will have no such power to interfere.

PRESIDENT.—What Mr. Puttanna Chetty states is that an innovation has been made by the Select Committee and that therefore the newly added sub-clause (2) should be deleted.

MR. B. NAGAPPA.—It is no innovation at all. It only enacts the existing practice. Whether as an appellate authority or otherwise, Government have been entertaining petitions from the orders of a District Magistrate passed as the head of the District Police. If the same is proposed to be continued, the question will be under what section they are to interfere.

PRESIDENT.—Will you quote from the Madras or the Bombay Act or the Police Rules any provision for an appeal to Government against the order of a District Magistrate passed under clause 44?

MR. B. NAGAPPA.—I quote the proceedings of the Mysore Government itself to show what the existing practice is.

PRESIDENT.—The practice will be continued.

MR. B. NAGAPPA.—If so, it is all right. But the deletion of the sub-clause affects the power of Government to entertain appeals, especially when no reference is made to the existing practice.

PRESIDENT.—We do not propose to interfere with the existing practice. To justify a provision in the Regulation for the first time, have you any precedent, either in the Madras or the Bombay Act or in the Police Rules?

MR. B. NAGAPPA.—Similarly, there is no provision for insisting upon people to take out a license and if we have to adhere to the existing practice a license will have to be taken out in every case. An Amildar may refuse to grant a license. Then, is no appeal to lie against his order?

PRESIDENT.—We take this provision about licenses from the existing Police Rules. Magistrates may issue licenses as provided for in those rules.

MR. B. NAGAPPA.—The Rules say that the Amildar-Magistrate or the Deputy Commissioner may grant licenses. That means that an appeal will lie to the Deputy Commissioner against the order of the Amildar refusing to grant a license.

MR. K. P. PUTTANNA CHETTY.—The same presumption will continue.

MR. T. ANANDA RAO.—There is one point which I think has to be borne in mind. The order proposed to be appealed against is one passed in regard to a particular occasion. I think it will be an order in regard to an assembly which is coming on immediately. I should like to know what object will be served in appealing against that order after the occasion is over.

MR. V. N. NARASIMMIYENGAR.—The order may apply to succeeding occasions as for instance, Holi feast.

MR. B. NAGAPPA.—If you allow that it is competent for a Deputy Commissioner to hear parties and decide on the legality of an order passed by an Amildar, why not provide for the same in the Regulation itself.

MR. M. C. RANGIENGAR.—I do not think that an appeal is preferred to the Deputy Commissioner at present. What is done is, only a petition is filed, which is registered as a miscellaneous petition. The Deputy Commissioner hears the parties and either cancels or confirms the order of the Amildar. The petition presented to him is as a Deputy Commissioner having jurisdiction over the whole area of a district. The amendment proposed by Mr. Puttanna Chetty gives power to the Deputy Commissioner to entertain a petition against an order passed by an officer subordinate to him and to deal with it in any way he thinks fit. Within his jurisdiction any body can apply to the Deputy Commissioner irrespective of the question whether the subject went before an Amildar or an Assistant Commissioner.

PRESIDENT.—Yes. The amendment proposed does not affect the right of parties. The order passed by the Deputy Commissioner will be in his capacity as the head of the District, *i.e.* in his executive capacity, and it would be inexpedient for Government to entertain an appeal from that order and interfere with it. If the order relates to a custom, the question whether the continuance of the custom is desirable or not may come before Government after the event is over, but so for as the emergency of the occasion is concerned, the Deputy Commissioner has to take such action as he thinks fit after taking all the circumstances of the case into consideration.

MR. B. NAGAPPA.—May I ask if the existing practice will be continued?

PRESIDENT.—Yes; it will be continued. We may give you an assurance as to that.

MR. B. NAGAPPA.—In that case, I beg to withdraw my opposition.

The Council resolved to adopt sub-clause (1) as amended by Mr. K. P. Puttanna Chetty and to omit sub-clause (2).

CLAUSE 44, SUB-CLAUSES (3) to (6).

MR. K. P. PUTTANNA CHETTY.—Clause 44, sub-clause (1), refers to the powers of the Magistracy and the Amildar. Sub-clauses (3) to (6) define the powers of the Police to regulate assemblies etc., and may well form a separate clause by themselves.

MR. C. SRINIVASIENGAR.—I beg to second this proposition.

This was approved by the Council.

Proposed by Mr. Puttanna Chetty and seconded by Mr. Srinivasiengar that the word and figure "and 44" be inserted after the figure "42" and that the words "of this regulation" be omitted.

This was also approved.

CLAUSE 44, SUB-CLAUSE (5).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Srinivasiengar that the word "such" in the fifth line of this clause be omitted and the words "issued under this or the preceding section" inserted after the word "order" in the same line.

This was also approved.

CLAUSE 44, SUB-CLAUSE (6).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Srinivasiengar that the words "given under this section" occurring in this sub-clause be omitted.

This was also approved.

The amendment proposed to be moved by Mr. Srinivasiengar to omit the words "as for an arrear of land revenue" was withdrawn by him, as on further consideration he was of opinion that there would be no harm in allowing them to remain, although there was a general provision regarding this in clause 23 of the bill.

CLAUSE 45, SUB-CLAUSE (4).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that this sub-clause which the Select Committee has deleted may be retained.

MR. T. ANANDA RAO.—I beg to second the amendment.

MR. A. RANGASWAMI IYENGAR.—This provision goes too much into details. It gives power to destroy a dog if it could not be traced to the owner. It had better be omitted.

MR. K. P. PUTTANNA CHETTY.—If the dog has a collar round its neck, the owner must be traced.

The proposal was approved.

CLAUSE 46, SUB-CLAUSE (1).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Rangaswami Iyengar that the words "relating to revenue or any other law at the time in force" deleted by the Select Committee be restored and the words "or rule having the force of law" inserted by the Select Committee be deleted.

This was approved by the Council.

CLAUSE 51.

The amendment proposed to be moved by Mr. Srinivasiengar to substitute "Regulation" for "Act" was withdrawn by him.

CLAUSE 54 (*i*).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the original wording of this clause be restored. The word "gathered" has a special meaning there. The provision applies to persons assembled for the purpose and not to spectators.

MR. C. SRINIVASIENGAR.—The original wording seems to be better. I second the amendment.

The amendment was adopted.

CLAUSE 54, SUB-CLAUSE (*j*) (ii).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Rangaswami Iyengar that the word "permits" be restored in place of the word "causes" substituted by the Select Committee.

This was approved.

CLAUSE 54 (*k*).

Proposed by Mr. Srinivasiengar and seconded by Mr. Puttanna Chetty that the words "in any street" inserted by the Select Committee be omitted.

This was also approved.

CLAUSE 54 (*w*).

MR. SRINIVASIENGAR.—I have got my doubts about the words "in any street" in this para.

MR. PUTTANNA CHETTY.—We discussed the question in the Select Committee and came to the conclusion that if the act is done in any place other than a street, it is not punishable. The object is to prevent it from becoming a public nuisance; the words "in any street" were advisedly inserted. "Street" is defined in the Regulation as including "a highway, etc.——."

MR. RANGASWAMI IYENGAR.—I find that even the original Police Committee had proposed to insert the words "in any street." Only they were not inserted somehow. (*Vide* page 19—para 88 of the Report of the Committee originally appointed to revise the Draft Police Regulation).

MR. SRINIVASIENGAR.—I withdraw my objection. I thought "in any public place" was what was meant.

CLAUSES 61, 62, 64 & 77.

The amendments to these clauses of which notice had been given by Messrs. Srinivasiengar and Syed Amir Hassan were withdrawn by them.

CLAUSE 78.

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the words added by the Select Committee to this clause be deleted.

MR. C. SRINIVASIENGAR.—I second the amendment.

MR. B. NAGAPPA.—It is better to keep the clause as it is, as by following the irregular procedure, the interests of the party will be affected.

MR. A. RANGASWAMI IYENGAR.—The general saving clause is not to be mutilated in the way in which it has been. Whether a party should be punished or not is a different question. So I think the words inserted by the Select Committee may be omitted.

PRESIDENT.—The informality will not invalidate the order.

The amendment proposed was put to the Council and was carried.

CLAUSE 79, SUB-CLAUSE (1).

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the words "intended pursuance" occurring in the original sub-clause but omitted by the Select Committee be retained.

MR. A. RANGASWAMI IYENGAR.—I second the motion.

MR. M. C. RANGIENGAR.—Because the words "good faith" appear, these words were considered unnecessary.

MR. RANGASWAMI IYENGAR.—I think the section as proposed to be amended gives greater protection.

MR. RANGIENGAR.—I beg to oppose the amendment.

The amendment was put to the Council and carried, the votes being 7 *for* and one *against*, others not voting.

CLAUSE 79, SUB-CLAUSE (3).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Srinivasiengar that the original wording of the clause be restored.

This was approved by the Council.

CLAUSE 79, SUB-CLAUSE (4).

Proposed by Mr. Puttanna Chetty and seconded by Mr. Srinivasiengar that this sub-clause which has been deleted by the Select Committee be restored.

This was also approved by the Council.

MR. K. P. PUTTANNA CHETTY.—Sir, I beg to propose that the Police Bill as now amended by this Hon'ble Council be taken into consideration and passed at a subsequent meeting of the Council.

MR. B. NAGAPPA.—I second the motion.

PRESIDENT.—The date of the next meeting will be announced later on. It may be about the first week of June.

MR. B. NAGAPPA.—May I suggest that the bill as now amended be printed and circulated among the members.

MR. RANGASWAMI IYENGAR.—As the bill will not be published in the *Mysore Gazette* till it is passed into law, I think the final corrected proof may be sent to the Members, so that they may point out any corrections that may be found necessary.

The meeting was declared dissolved by the President.

V. P. MADHAVA RAO,
President.